MONTANA
ADMINISTRATIVE
REGISTER

ISSUE NO. 13 – JULY 11, 2025

TABLE OF CONTENTS

PROPOSAL NOTICES

- Administration, Department of, Title 2
  - 2025-161.1 Notice of Proposed Rulemaking – Decedent's Warrant.
  - 2025-220.1 Notice of Proposed Rulemaking – Report Filing Fees.
- Fish, Wildlife and Parks, Department of, Title 12
  - 2025-250.1 (Fish and Wildlife Commission) – Notice of Proposed Rulemaking – Adoption of Private Landowner's Rules.
- Administration, Department of, Title 2
  - 2025-212.1 (Public Employees' Retirement Board) – Notice of Proposed Rulemaking – Revisions of the Public Employees' Retirement System Deferred Compensation Plan Document and State of Montana 457(b) Deferred Compensation Plan Document – General Revisions of Other Administrative Rules for Clarity and Consistency.
- Natural Resources and Conservation, Department of, Title 36
  - 2025-157.1 – Notice of Proposed Rulemaking – Water Right Permitting.
  - 2025-91.1 – Notice of Proposed Rulemaking – Recreational Use of State Trust Land.

ADOPTION NOTICES

- Commerce, Department of, Title 8

    - 2025-159.2 Notice of Adoption – Wood Products Revolving Loan Fund Program.

- Fish, Wildlife and Parks, Department of, Title 12

    - 2025-111.2 (Fish and Wildlife Commission) – Notice of Adoption – Citizen-Initiated Rulemaking for the Bull River in Sanders County.

- Public Health and Human Services, Department of, Title 37

    - 2025-522.2 – Notice of Adoption – Medicaid Hospice Reimbursement.

OTHER

- Fish, Wildlife and Parks, Department of, Title 12

    - 2025-165.1 Notice of Adoption of Emergency Rule – Closing the Harrison Lake Fishing Access Site.

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DEPARTMENT OF ADMINISTRATION

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-161.1

Summary

Amendment of ARM 2.21.3105 pertaining to a decedent's warrant

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No Hearing Scheduled

If the agency receives requests for a public hearing on the proposed rulemaking from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed rulemaking; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

The estimated number of persons directly affected by the proposed rulemaking has been determined to be greater than 25 based on the number of employees within the state of Montana.

Comments

Comments may be submitted using the contact information below. Comments must be received by Friday, August 8, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Wednesday, July 23, 2025, at 5:00 p.m.

Contact

Jeff Plum
406-444-5183
jeff.plum@mt.gov
Montana Relay: 711

Rulemaking Actions

AMEND

The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

2.21.3105 DECEDENT'S WARRANT

(1) A decedent's warrant is a legally binding ~~document~~ form which permits a state employee to designate a person to receive the employee's pay, benefits, and/or travel allowances due at the time of the employee's death. Anyone, including a minor, may be designated as the person to receive a decedent's warrant.

(2) Warrants for money due the employee or the estate will be reissued in the name of the designated person and will be delivered to that person without recourse to estate administration procedures if the properly completed form is on file with the employing agency at the time of the employee's death.

(3) Only one warrant will be issued by the department of administration as a replacement for each warrant the decedent would have received.

(4) The employee is required to complete the electronic "designation of person authorized to receive decedent's warrants" form ~~is required~~. ~~Instructions are printed on the form and must be reviewed for accuracy by the employing agency.~~

(5) An employee may change a designation at any time by ~~filing~~ submitting a new designation form. Upon termination and after all salary, benefits, and travel warrants made payable to the employee have been delivered to the employee's designee and paid, the designation ~~must~~ will be ~~automatically~~ canceled ~~and filed in the employee's personnel file~~.

(6) Upon the death of an employee, the employing agency ~~completes the information on the designation form~~ notifies the Department of Administration with the ~~(~~employee's name~~,~~ and date of death~~, and signature of certifying officer)~~. ~~If the employee has completed an older form that does not have this information printed~~

~~on the side, this information must be typed on the right-hand margin. The employing agency keeps the original of the designation form on file at all times. Two photocopies of the designation form must be sent to the department of administration with each unnegotiated warrant. The designation form and unnegotiated warrants may not be sent to central payroll.~~ The Department of Administration will use the most current designation form to complete the final decedent warrant.

(7) When an employee paid through electronic fund transfer dies, the last regularly occurring pay warrant that includes wages due before the date of death will be electronically deposited into the employee's checking or savings account. The final remittance for any unpaid wages, benefits and/or travel claims will be generated as a warrant and delivered to the designee.

(8) ~~Applicable warrants are to be identified by number, date, and amount on the reverse side of the original designation.~~ After all warrants have been delivered to the designee, the designation ~~must be canceled and filed~~ is canceled.

(9) Warrants must be delivered to ~~a~~ the designee by the Department of Administration and accompanied by a photocopy of the ~~designation on file~~ warrant details.

(10) Neither refund of retirement contributions nor payment of death benefits is covered by the designation of decedent's warrant.

Authorizing statute(s): 2-18-401, MCA

Implementing statute(s): 2-18-412, MCA

Reasonable Necessity Statement

Central Payroll within the Department of Administration is seeking to implement an online version of the Decedent Warrant form in the Statewide Accounting, Budgeting, and Human Resources System (SABHRS). The change of moving from a paper decedent warrant form to an online decedent warrant provides state employees with a more simplified and efficient way of updating the form. This change will also ensure central payroll always has the most recent and electronic form on file.

Small Business Impact

The Department of Administration, State Human Resources Division, is responsible for adopting rules that primarily affect employees of the State of Montana. In particular, the rules established under Title 2, chapter 21, subchapter 31 are likely only to impact State of Montana

employees and their beneficiaries. Consequently, the small business impact analysis conducted in accordance with 2-4-111, MCA demonstrates that no small businesses are anticipated to be directly affected by the proposed rule change. Documentation of the small business impact analysis is available upon request.

Bill Sponsor Notification

The bill sponsor contact requirements of do not apply.

Interested Persons

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list must make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the person listed in paragraph two or may be made by completing a request form at any rules hearing held by the department.

Rule Reviewer

Don Harris, Chief Legal Counsel

Approval

Misty Ann Giles, Director

MONTANA
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DEPARTMENT OF ADMINISTRATION

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-220.1

Summary

The department proposes to amend ARM 2.4.402 pertaining to report filing fees.

No Hearing Scheduled

If the agency receives requests for a public hearing on the proposed rulemaking from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed rulemaking; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

The estimated number of persons directly affected by the proposed rulemaking is 13, which is derived from the total number of 1,300 local governments in Montana.

Comments

Comments may be submitted using the contact information below. Comments must be received by Friday, August 8, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Wednesday, July 23, 2025, at 5:00 p.m.

Contact

Danielle Vincent
406-444-3887
Danielle.Vincent@mt.gov
Montana Relay 711

Rulemaking Actions

AMEND

The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

2.4.402 REPORT FILING FEE

(1) A local government filing fee is based on the following definitions:

(a) "Annual" means the fiscal year of the local government entity.

(b) "Revenues" means all receipts or inflows of resources from any source excluding the proceeds from bond issuances and other long-term debt not received from state or federal sources.

(i) Revenues must be based on the recognition criteria of the financial reporting framework presented in the audit report.

(ii) Revenues may be provisionally based on amounts presented in the financial report required by 2-7-503, MCA, until such time that the audit report for the same period is issued.

(iii) The department and the local government entity shall settle the balance of any resulting difference in the filing fee when the audited revenues are available.

(iv) When applicable, revenues do not include receipts or inflows of resources presented in the following types of financial statements:

(A) governmentwide;

(B) investment trust funds; or

(C) custodial funds.

(2) For school districts and associated cooperatives:

(a) revenues are based on the recognition criteria of the financial reporting framework presented in the annual financial report required by the Superintendent of Public Instruction;

(b) in the case of combined elementary and high school districts, the annual filing fee is based upon the combined annual revenue amounts of both districts; and

(c) in the case of school districts and associated cooperatives having an audit covering two fiscal years, the department shall calculate a separate fee based on the annual revenue amounts for each fiscal year covered by the audit.

(3) The annual filing fees for local government entities are:

Annual Revenues in Excess of:	Annual Revenues Equal to or Less Than:	Fee
~~$750,000~~	~~$1,000,000~~	~~$550~~
$1,000,000	$1,500,000	$800
$1,500,000	$2,500,000	$950
$2,500,000	$5,000,000	$1,300
$5,000,000	$10,000,000	$1,700
$10,000,000	$50,000,000	$2,500
$50,000,000		$3,000

~~This filing fee schedule is effective for annual financial reports due on or after July 1, 2017.~~

Authorizing statute(s): 2-7-514, MCA

Implementing statute(s): 2-7-514, MCA

Reasonable Necessity Statement

Background: The Single Audit Act of 1984 requires entities spending a certain amount of federal funds to undergo a single audit, which covers all federal awards received. Montana local governments (entities) are required to have an audit when the total revenue or financial assistance in the period covered by the annual financial report exceeds a specific threshold dollar amount established by the director of the Office of Management and Budget (OMB). When this threshold is met, entities are required to pay a filing fee to the Department of Administration (DOA), as outlined in ARM 2.4.402.

Reason for Rule Amendment: The DOA utilizes the single audit threshold dollar amounts established by OMB's Uniform Guidance on Single Audits. The OMB increased the single audit threshold for entities that receive federal awards from $750,000 to $1 million, effective for fiscal periods starting on or after October 1, 2024. This change means that non-federal entities receiving less than $1 million in federal funds are no longer required to undergo a single audit.

This change affects the majority of entities, with approximately 1,200 out of 1,300 entities operating on a fiscal year from July 1 to June 30. Of these, around 450 entities (38%) are subject to federal audits. However, due to the effective date of OMB's guidance, these entities would not benefit from the increased single audit threshold until their fiscal year ending June 30, 2026. In the interim, they will still be required to complete a state audit for the fiscal year ending in 2025. Additionally, there are seven other fiscal year-end dates among the remaining entities, with some potentially qualifying for the new threshold as early as April 1, 2025.

Implementing the higher threshold on the federal date of October 1, 2024, would require the Local Government Services Bureau to maintain two sets of rules and two fee schedule tables. Therefore, to avoid complications in compliance and administration, the DOA proposes to implement the increased threshold for state audits for all entities.

An analysis of revenue levels indicates that raising the audit threshold for state audits from $750,000 to $1 million for all entities with a fiscal year ending in calendar year 2025, would exempt approximately 21 to 23 Montana local governments from needing a state audit and thus paying the $550 fee. This change would lead to an approximate reduction in revenue between $11,550 and $12,650 from the State Financial Services Division budget.

Small Business Impact

The rules adopted for Title 2, chapter 4, subchapter 4 only impact Montana local governments that receive federal awards. Therefore, the small business impact analysis performed as required by 2-4-111, MCA indicates that no small businesses are likely to be directly impacted by the proposed rule change. Documentation of the small business impact analysis is available upon request.

Bill Sponsor Notification

The bill sponsor contact requirements of do not apply.

Interested Persons

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list must make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the person listed in paragraph two or may be made by completing a request form at any rules hearing held by the department.

Rule Reviewer

Don Harris, Chief Legal Counsel

Approval

Misty Ann Giles, Director

MONTANA
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FISH AND WILDLIFE COMMISSION

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-250.1

Summary

Adoption of NEW RULE 1 pertaining to the adoption of private landowner's rules

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Hearing Date and Time

Thursday, August 14, 2025, at 10:00 a.m.

Virtual Hearing Information

Join Zoom Meeting

https://mt-gov.zoom.us/j/84324564433?pwd=XKq4UuawvFJ7D0QsOJdVJmoY3DPFar.1

Meeting ID: 843 2456 4433

Password: 907159

Dial by Telephone

+1 646 558 8656

Meeting ID: 843 2456 4433

Password: 907159

Find your local number: https://mt-gov.zoom.us/u/kcePLaaNiG

Join by SIP

84324564433@zoomcrc.com

Join by H.323 (Polycom)

162.255.37.11##84324564433

Comments

Comments may be submitted using the contact information below. Comments must be received by Friday, August 15, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, July 31, 2025, at 5:00 p.m.

Contact

Kara Thompson
(406) 594-8071
kara.thompson@mt.gov

General Reasonable Necessity Statement

The Fish and Wildlife Commission is proposing the adoption of a new rule to adhere to the requirements of Senate Bill 83 (2025 Montana Legislature) and to further clarify how rules on private landowner's property enrolled in public access agreements will be adopted and enforced.

Rulemaking Actions

ADOPT

The rule proposed to be adopted is as follows:

NEW RULE 1 (12.2.609) ADOPTION OF PRIVATE LANDOWNER'S RULES

(1) Any individual accessing lands that are approved by either the department or the commission for public access programs administered by the department must adhere to the rules established by the landowner.

(2) A violation of a landowner's published access rules on lands enrolled in any of the public access programs administered by the department is considered a violation of commission rule.

(3) The landowner's published access rules will be available on the department's website.

Authorizing statute(s): 87-1-301, MCA

Implementing statute(s): 87-1-301, MCA

Small Business Impact

The proposed regulation creates a standard of conduct for an individual recreationist utilizing private property enrolled in a commission or department public access program. The conduct referenced in the regulation (i.e., compliance with a private landowner's rules) has no connection to commerce, the economy, or small business. As a result, there is no class or group of businesses that may be affected by this proposed rulemaking and no small business impact analysis is available.

Bill Sponsor Notification

The department met with SB 83's primary sponsor, Senator Denley Loge, on June 27, 2025, and transmitted a follow-up email to Senator Loge on the same date. Senator Loge had no substantive feedback or comments on the proposed rule language. On July 1, 2025, Senator Loge was informed by email of the Secretary of State's process, including the new hearing date and deadline to submit comments.

Interested Persons

The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department, commission or board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to the Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be completed online at https://public.govdelivery.com/accounts/MTFWP/subscriber/new.

Rule Reviewer

Alex Scolavino

Approval

Lesley Robinson, Chair
Fish and Wildlife Commission

MONTANA
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PUBLIC EMPLOYEES' RETIREMENT BOARD

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-212.1

Summary

The proposed rulemaking incorporates the Public Employees' Retirement Board's recent revisions of the Public Employees' Retirement System Defined Contribution plan document and State of Montana 457(b) Deferred Compensation plan document, adopted by reference respectively at ARM 2.43.3501 and 2.43.5101, and generally revises ARM 2.43.2104, 2.43.2301, 2.43.2311, 2.43.2324, 2.43.2610, and 2.43.4617 for clarity and consistency with current administrative practices.

No Hearing Scheduled

If the agency receives requests for a public hearing on the proposed rulemaking from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed rulemaking; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

Ten percent of the estimated number of persons directly affected has been determined to be 12,852 persons based on approximately 112,483 participants in the Defined Benefit Retirement Plans, 6,288 participants in the Defined Contribution Retirement Plans, and 9,742 participants in the Deferred Compensation Plans.

Comments

Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov. Comments must be received by Friday, August 8, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, August 1, 2025, at 5:00 p.m.

Contact

Kris Vladic
406-444-2578
kvladic@mt.gov
Fax: 406-444-5428

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

2.43.2104 NEW MEMBERS~~HIP CARDS~~

(1) ~~Each~~ New members must complete a membership/designation of beneficiary form upon employment ~~or change of beneficiary,~~ and return the form to their employer. The form must be immediately forwarded by the employer to MPERA. The designation of beneficiary is only effective upon receipt by MPERA.

~~(2) If a member accepts a temporary or second job covered by the same retirement system as their other existing job, the member must:~~

~~(a) indicate "temporary" or "dual employment" status on the form; and~~

~~(b) leave the beneficiary nomination section blank unless the member intends to override their beneficiaries currently on file with MPERA.~~

Authorizing statute(s): 19-2-403, MCA

Implementing statute(s): 19-2-801, 19-6-505, 19-9-1102, 19-13-903, MCA

Reasonable Necessity Statement

The Public Employees' Retirement Board (board) proposes to amend this rule to reflect current Montana Public Employees' Retirement Administration (MPERA) practice, in that membership cards were the process by which employers notified MPERA of new members prior to the implementation of electronic systems for conducting this business. New language reflects that the initial membership form now exists primarily to collect a new member's initial beneficiary designation.

2.43.2301 PROCESS FOR PURCHASING SERVICE

(1) Members of MPERA-administered retirement systems interested in purchasing any service credit permitted in PERS, JRS, HPORS, SRS, GWPORS, MPORS, or FURS must submit a written request to MPERA providing the following member information:

(a) full name, including previous surnames, if any;

(b) social security number;

(c) home address;

(d) current retirement system;

(e) name of employer for whom service was performed;

(f) type of service to be purchased, if known;

(g) dates of service to be purchased, if applicable; and

(h) number of years of "one-for-five" service to be purchased, if applicable.

(2) MPERA shall provide written notification to the member of the type and amount of service eligible to be purchased, and the cost of that service. All cost statements are valid for 30 days. Written notification will include:

(a) cost statement;

(b) service purchase contract;

(c) payroll deduction authorization form; and

(d) rollover/transfer notification form.

(3) A member who chooses to purchase service must complete and return the service purchase contract and the applicable payment form to MPERA. The service purchase contract must indicate:

(a) the type of service the member wishes to purchase;

(b) whether the member intends to purchase all, or a specific portion of the service; and

(c) how the member intends to pay for the service.

(4) Service can be purchased in a lump sum, through monthly payments, or by a combination of both. Service purchases other than by lump sum are subject to interest as determined by MPERA and computed over the entire payment period.

(5) Lump-sum payment methods include cash, personal check, and direct rollovers or trustee-to-trustee transfers from an eligible retirement plan.

(a) Lump-sum payments by cash or personal check require completion of the service purchase contract only.

(b) Payment by direct rollover or trustee-to-trustee transfers from an eligible retirement plan require completion of the service purchase contract and the rollover/transfer notification.

(6) Monthly installment payments can be made after tax through cash or personal check, or pretax through payroll deductions.

(a) Monthly installment payments that come directly from the member to MPERA require completion of the service purchase contract only.

(b) Monthly installment payments through paycheck deduction require completion of the service purchase contract and the payroll deduction authorization.

(7) If a monthly installment payment ~~made through cash or personal check~~ is missed, the service purchase contract will terminate and the member will receive prorated service credit based on the amount previously paid.

(8) The type of service being purchased cannot be changed once the purchase commences.

Authorizing statute(s): 19-2-403, MCA

Implementing statute(s): ~~19-2-303(22),~~ 19-2-704, 19-3-513, 19-6-804, 19-7-804, 19-8-904, 19-9-411, 19-13-405, MCA

Reasonable Necessity Statement

The board proposes to amend this rule to remove overly narrow language and clarify that service purchases will be prorated when *any* monthly installment payment is missed—not just those that are expected to be made via cash or personal check. For example, a member making installment payments by way of payroll deduction may go on a period of unpaid leave; and thus, there would be no earnings from which the employer could pick up service purchase

contributions. Removal of the cash and personal check language allows employers and members to understand the full range of scenarios in which a service purchase may be prorated.

2.43.2311 LIMITATIONS ON PURCHASES OF SERVICE

(1) A PERS member may not purchase service unless and until the member elects to participate in the PERS Defined Benefit Retirement Plan.

(2) A retirement system member may not purchase the same period of military, federal volunteer service, or public service employment in more than one retirement system.

(3) A retirement system member may not receive service credit for any purchase of service related to any calendar month for which full service credit has already been granted.

(4) Retired members may not purchase service.

Authorizing statute(s): 19-2-403, MCA

Implementing statute(s): 19-2-603, 19-2-715, 19-3-503, 19-3-515, 19-3-522, 19-5-410, 19-6-801, 19-7-803, 19-8-901, 19-9-403, 19-13-403, MCA

Reasonable Necessity Statement

The board proposes to amend this rule to notify retired members of the existing federal law requirements of 26 USC § 415(n)(3)(A), which disallows permissive service credit purchases by members of qualified governmental plans when the member has already received a benefit payment from that plan.

2.43.2324 GUARANTEED ANNUAL BENEFIT ADJUSTMENT COVERAGE

(1) Defined benefit members who terminate covered employment, accept a refund of their accumulated contributions, and later return to covered employment in the same system, ~~will be~~ are eligible for the GABA provisions in effect at the time the member returns to covered employment.

(2) Purchase of ~~the~~ refunded ~~time~~ service or allowable retroactive periods of service (for example, periods when excluded from membership, periods for which optional membership was declined, periods of service credit from other public retirement

systems, or periods of federal employment) does not affect the member's ~~new~~ hire date. The member ~~will~~ remains ~~eligible for~~ subject to the GABA provisions ~~then in effect~~ applicable to their hire date, not the GABA ~~associated with~~ in effect during the periods of ~~the~~ refunded or retroactive ~~time~~ service.

Authorizing statute(s): 19-2-403, MCA

Implementing statute(s): 19-2-603, 19-2-715, 19-3-403, 19-3-505, 19-3-510, 19-3-512, 19-3-1605, 19-6-712, 19-7-711, 19-8-1105, MCA

Reasonable Necessity Statement

The board proposes to amend this rule to provide uniform guidance to members of the longstanding general principle that purchases of service for periods of time prior to retirement system membership do not confer the guaranteed annual benefit adjustment coverage of statutory provisions that were in effect during the periods of pre-membership service being purchased. The current language of the rule clearly states this treatment for redeposits or purchases of refunded service but does not reflect other various scenarios in which pre-membership service may be purchased.

2.43.2610 DESIGNATION OF BENEFICIARY BY RETIREES, ALTERNATE PAYEES, AND CONTINGENT ANNUITANTS

(1) ~~A retiree, alternate payee, or contingent annuitant shall make the selection of beneficiary in writing and~~ Beneficiaries may only be designated on ~~the~~ a form provided by MPERA, which must be dated and signed by the ~~individual participant, and witnessed by a disinterested third party~~ member or payment recipient.

(2) Except as provided in (3), the designation of beneficiary shall be effective immediately upon filing with MPERA.

(3) If a retirement system member who has applied for retirement dies prior to receipt of their initial retirement benefit, the member's beneficiary must revert to the beneficiary or beneficiaries designated on their retirement system membership form.

Authorizing statute(s): 19-2-403, MCA

Implementing statute(s): 19-2-801, 19-2-907, 19-3-1501, 19-5-701, 19-7-1001, 19-8-1105, MCA

Reasonable Necessity Statement

The board proposes to amend this rule to clean up existing language and to remove the anachronistic requirement that these designations include a witness signature. Witness signatures on retirement plan beneficiary designation forms are historically an offshoot of spousal consent requirements for joint and survivor annuities that are governed by the Employee Retirement Income Security Act of 1974, the provisions of which do not apply to government plans such as those administered by MPERA. Moreover, witness signature requirements are incompatible with the modern practice of conducting retirement plan business with electronic forms.

2.43.3501 ADOPTION OF DEFINED CONTRIBUTION PLAN DOCUMENT AND TRUST AGREEMENT

(1) The board adopts and incorporates by reference the following:

(a) State of Montana Public Employee Defined Contribution Plan Document ~~(January 2018 edition)~~ that was approved by the board on June ~~11~~ 12, ~~2020~~ 2025, and describes the terms and conditions related to the operation and administration of the plan;

(b) State of Montana Public Employee Defined Contribution Plan Trust Agreement (July 1, 2002, edition), that was approved by the board on April 26, 2001, and September 28, 2001, and approved by the Internal Revenue Service on September 24, 2001. The trust agreement sets the board's responsibilities as trustee of the defined contribution plan and requires that the assets of the trust be used for the exclusive benefit of the plan participants and beneficiaries.

(2) Copies of the Defined Contribution Plan Document, Trust Agreement, and related materials may be obtained from MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1 (877) 275-7372 , e-mail mpera@mt.gov, and are available on MPERA's web site at www.mpera.mt.gov.

Authorizing statute(s): 19-3-2104, MCA

Implementing statute(s): 19-3-2102, MCA

Reasonable Necessity Statement

The board, as administrator of the Public Employee Retirement System's (PERS) State of Montana 401(a) Defined Contribution Plan (DCRP), is proposing to revise the DCRP Plan Document (plan document) to incorporate recent changes to federal law directly applicable to the operation of the plan, update annual compensation and deferral limits, and make general language clean-up changes for consistency and clarity.

As provided for in the Consolidated Appropriations Act signed into law on December 29, 2022, which incorporated the retirement reform provisions contained in the SECURE 2.0 Act of 2022, plan document amendments are necessary to reflect current federal law regarding required minimum distribution ages and other distribution rules, and provide language covering "5 and 10 year rules" for distribution to beneficiaries and special distribution rules for "eligible designated beneficiaries." Additional changes throughout the plan document are intended to provide for consistent use of language throughout the document or to provide additional clarity.

The revised plan document was reviewed and approved by the board at its June 12, 2025, board meeting. Because the board determined to adopt the original plan document by reference, 2-4-307(3), MCA, requires that changes to plan documents also be adopted by reference. Therefore, it is necessary to amend the rule that adopts the plan document to indicate the version of the plan document being adopted by reference.

The plan document is available on the board's web page at mpera.mt.gov.

2.43.4617 DISTRIBUTION OF DROP BENEFIT

(1) The DROP benefit will be distributed upon the participant's termination of ~~employment~~ service. The participant may request to receive the DROP benefit in a lump sum, or in a direct rollover to another eligible plan, as allowed by the Internal Revenue Service (IRS).

(2) To make a direct rollover of the DROP benefit, the participant must make arrangements with the other plan and provide any necessary information to MPERA.

(3) A participant must designate a distribution method within 60 days after termination of employment; otherwise MPERA will pay the DROP benefit to the participant in a lump sum. Any required federal or state withholding will reduce the amount of the payment.

(4) MPERA will distribute the DROP benefit as soon as administratively feasible once all appropriate documents are filed with MPERA.

(5) Upon a DROP participant's death, the participant's DROP benefit will be paid to the participant's survivors or, if no survivors exist, then to the participant's designated beneficiaries. The DROP benefit will be paid in a lump sum, unless the recipient

chooses to receive the DROP benefit in a direct rollover to another eligible retirement plan, as allowed by the IRS.

Authorizing statute(s): 19-2-403, 19-9-1203, MCA

Implementing statute(s): 19-2-1007, 19-9-1206, 19-9-1208, MCA

Reasonable Necessity Statement

The board proposes to amend this rule to correct a conflict with the Montana Code Annotated, in that 19-9-1208, MCA, provides that a Municipal Police Officers' Retirement System Deferred Retirement Option Plan (DROP) may be distributed "upon termination of service," but the existing language of this rule states that the DROP benefits will be distributed upon "termination of employment." "Termination of service" and "termination of employment" are defined differently within 19-2-303, MCA; and thus, this amendment is necessary to remove this conflict.

Although 2-4-305(2), MCA, provides the requirement that administrative rules "may not unnecessarily repeat statutory language," the board believes that this minimal repetition is necessary in order to properly interpret the remaining provisions of the rule as "termination of service" serves as the temporal starting point of the processes outlined within the rule.

2.43.5101 ADOPTION OF DEFERRED COMPENSATION PLAN DOCUMENT AND TRUST AGREEMENT

(1) The board adopts and incorporates by reference the following:

(a) State of Montana Public Employee Deferred Compensation Plan Document, that was approved by the board on ~~February 9, 2023~~ June 12, 2025, and describes the terms and conditions related to the operation and administration of the plan; and

(b) State of Montana Public Employee Deferred Compensation Plan Trust Agreement (January 1, 2002 edition), that was approved by the board on February 22, 2001, and September 28, 2001. The trust agreement sets the board's responsibilities as trustee of the deferred compensation plan and requires that the assets of the trust be used for the exclusive benefit of the plan participants and beneficiaries.

(2) Copies of the Deferred Compensation Plan Document, Trust Agreement, and related materials may be obtained from the MPERA, 100 North Park Avenue, Suite

200, P.O. Box 200131, Helena, MT 59620-0131, phone 1 (877) 275-7372 , e-mail mpera@mt.gov, and are available on MPERA's web site at www.mpera.mt.gov.

Authorizing statute(s): 19-50-102, MCA

Implementing statute(s): 19-50-102, MCA

Reasonable Necessity Statement

The board, as administrator of the State of Montana 457(b) Deferred Compensation Plan, is proposing to revise the 457(b) Deferred Compensation Plan Document to incorporate recent changes to federal law directly applicable to the operation of the plan, remove outdated language no longer applicable to the plan, and make general language clean-up changes for consistency and clarity.

As provided for in the Consolidated Appropriations Act signed into law on December 29, 2022, which incorporated the retirement reform provisions contained in the SECURE 2.0 Act of 2022, plan document amendments are necessary to reflect current federal law regarding updated age 50 “special catch-up” deferrals and special 457 catch-up deferral limits, changes to maximum in-service distribution limits and other distribution and deferral rules, changes regarding self-attestation for unforeseeable emergency distributions, and new “5 and 10 year” rules for distribution to beneficiaries and the special distribution rules for “eligible designated beneficiaries.” Additional changes throughout the plan document are intended to provide for consistent use of language throughout the document or to provide additional clarity.

The revised plan document was reviewed and approved by the board at its June 12, 2025, board meeting. Because the board determined to adopt the original plan document by reference, 2-4-307(3), MCA, requires that changes to plan documents also be adopted by reference. Therefore, it is necessary to amend the rule that adopts the plan document to indicate the version of the plan document being adopted by reference.

The plan document is available on the board's web page at mpera.mt.gov.

Small Business Impact

The board has determined that no class or group of businesses is directly affected by the proposed rulemaking. None of the proposed amendments represents a significant departure from existing practices so as to result in an increase or decrease in existing retirement plan participant benefits. Such benefits were paid to 28,905 in-state recipients in state fiscal year

2024, totaling $623,619,246.66. Please see the Public Employees' Retirement Board Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2024, at page 202 (available at https://mpera.mt.gov/_docs/CAFR/2024ACFR.pdf).

Bill Sponsor Notification

The bill sponsor contact requirements of do not apply.

Interested Persons

The Montana Public Employee Retirement Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person above or may be made by completing a request form at any rules hearing held by the Montana Public Employee Retirement Administration.

Rule Reviewer

Nicholas Domitrovich, Chief Legal Counsel

Approval

Maggie Peterson
President
Public Employees' Retirement Board

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-157.1

Summary

Amendment of ARM 36.12.101, 36.12.102, 36.12.103, 36.12.115, 36.12.117, and 36.12.1305 and Adoption of NEW RULES 1 through 7 pertaining to water right permitting

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Hearing Date and Time

Thursday, July 31, 2025, at 9:00 a.m.

Hearing Information

A public hearing will be held at the Department of Natural Resources and Conservation Building, Montana Conference Room, first floor, located at 1539 Eleventh Avenue, Helena, Montana.

Virtual Hearing Information

Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting:
1) https://mt-gov.zoom.us/j/88918282728?pwd=6ObYj9TfYRUmjacfrrhUSbHUZ5zHpT.1; Meeting ID: 889 1828 2728; Password: 286016; or

2) Dial by Telephone: +1 646 558 8656; Meeting ID: 889 1828 2728; Password: 286016

Find your local number: https://mt-gov.zoom.us/u/k78A8c5pk

Comments

Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the contact information listed below. Comments must be received by Friday, August 8, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Monday, July 21, 2025, at 5:00 p.m.

Contact

Jamie Price, Rules Coordinator
(406) 444-6615
DNRCOAH@mt.gov
Montana Relay 711

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

36.12.101 DEFINITIONS

In addition to definitions provided for in 85-2-102, MCA, and unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (3) remain the same.

(4) "Applicant" means the "person,"~~,~~ as defined in 85-2-102, MCA, who files a permit or change application with the department.

(5) "Application" for purposes of ARM 36.12.120 through 36.12.122, 36.12.1301, 36.12.1401, 36.12.1501, and 36.12.1601 means an application for beneficial water use permit, Form No. 600, or an application to change a water right, Form No. 606.

(a) For the purposes of ARM 36.12.117 "application" means an application filed under 85-2-302, 85-2-316, 85-2-402, 85-2-407, ~~and~~ 85-2-408, MCA, and [HB 432 (2025)].

(6) "Aquifer" means a geologic structure or unit that contains saturated and permeable material capable of yielding water in usable quantities.

(7) "Aquifer system" means a series of hydraulically connected aquifers whose horizontal and vertical extents could be limited by formation contacts, faults, surface water bodies, and less permeable materials.

(6) through (45) remain the same but are renumbered (8) through (47).

~~(46)~~(48) "Pit," "pit-dam," or "pond" means a body of water that is created by man-made means, which stores water for beneficial use.

(47) and (48) remain the same but are renumbered (49) and (50).

~~(49)~~(51) "Possessory interest" means the right to possess, use, or exert some interest or form of control over specific land. It is the legal right to possess or use property by virtue of an interest created in the property, though it need not be accompanied by fee title, such as the right of a tenant, easement holder, or lessee.

(50) through (52) remain the same but are renumbered (52) through (54).

(55) "Project completion notice" means a notice by the appropriator on a form provided by the department that the project works are completed, and water is being appropriated in substantial accordance with the terms of the permit authorization, including any reduction or modification of the permit pursuant to 85-2-313, MCA, or change authorization.

(53) through (60) remain the same but are renumbered (56) through (63).

~~(61)~~(64) "Source aquifer" means an aquifer or aquifer system ~~the specific groundwater source~~ from which water is diverted for a beneficial use.

(62) through (65) remain the same but are renumbered (65) through (68).

(69) "Substantial accordance" means that an appropriation has been completed in compliance with the terms of a permit authorization, including any reduction or modification pursuant to 85-2-313, MCA, or change authorization. Substantial accordance may allow for minor deviation from those terms if the department determines the deviation will not cause injury to other appropriators or otherwise does not require a change authorization.

(66) through (73) remain the same but are renumbered (70) through (77).

(78) "Verification" or "verify" means the process used by the department to determine whether completion of an appropriation of water and a project completion notice are in substantial accordance with the terms, conditions, restrictions, and

limitations of the permit authorization, including any reduction or modification pursuant to 85-2-313, MCA, or change authorization.

(74) through (80) remain the same but are renumbered (79) through (85).

Authorizing statute(s): 2-4-201, 85-2-113, 85-2-308, 85-2-370, MCA

Implementing statute(s): 85-2-113, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-351, 85-2-360, 85-2-361, 85-2-362, 85-2-364, 85-2-368, 85-2-370, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-418, MCA

Reasonable Necessity Statement

This rule is being amended to add definitions. The addition of “project completion notice,” “substantial accordance,” and “verification” definitions is associated with implementation of HB 441 from the 2025 legislative session. The definitions of “aquifer” and “aquifer system” are being added to provide clarity in how the department evaluates source aquifers for the purposes of water right applications.

36.12.102 FORMS

(1) The following necessary forms for implementation of the act and these rules are available from the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana 59620-1601 and its Water Resources regional offices, or on the department's website. The department may revise as necessary the following forms to improve the administration of these rules and the applicable water laws:

(a) and (b) remain the same.

(c) Form No. 602, "Notice of Completion of Groundwater Development~~,~~" ~~which must be submitted for groundwater developments with a maximum use of 35 GPM or less, not to exceed ten acre-feet per year~~;

(d) Form No. 602E, "Request for Extension for Authorized Notice of Intent to Appropriate Groundwater," which must be submitted to request an extension under [HB 681 (2025)];

(e) Form No. 602I, "Notice of Intent to Appropriate Groundwater," which must be submitted to file a notice under [HB 681 (2025)];

(d) remains the same but is renumbered (f).

~~(e)~~(g) Form No. 605, "Application for Provisional Permit for Completed Stockwater Pit or Reservoir," ~~,~~ which must be submitted for a pit or reservoir with a maximum capacity of less than 15 acre-feet and a total appropriation of less than 30 acre-feet per year;

(f) through (m) remain the same but are renumbered (h) through (o).

~~(n)~~(p) Form No. 625, "Correction to a Water Right ~~Correction~~";

(o) through (r) remain the same but are renumbered (q) through (t).

~~(s)~~(u) Form No. 634, "Notice of Change in Appropriation Right for a Replacement Well ~~Notice,~~" ~~which must be submitted for municipal wells that do not exceed 450 GPM, or for all other wells that do not exceed 35 GPM and ten acre-feet per year~~;

~~(t)~~(v) Form No. 635, "Notice of Change in Appropriation Right for Redundant Water Supply Well Construction ~~Notice~~," ~~,~~ which must be submitted for redundant wells in a public water supply system as defined by 75-6-102, MCA;

(u) remains the same but is renumbered (w).

~~(v)~~(x) Form No. 637, "Reinstatement Request," ~~,~~ which must be submitted to reinstate a permit or change authorization;

~~(w)~~(y) Form No. 638, "Water Reservation Application for Instream Flow," ~~,~~ which must be submitted for instream flow water reservation applications allowed under the United States of America, Department of Agriculture, Forest Service-Montana Compact, Article VI, section B;

~~(x) Form No. 639, "Waiver of Statutory Timelines";~~

~~(y)~~(z) Form No. 640, "Certification of Water Right Ownership Update," ~~,~~ which must be completed and submitted to the county clerk and recorder with a Realty Transfer Certificate when a water right is being divided or exempted (reserved) from the property;

~~(z)~~(aa) Form No. 641, "DNRC Ownership Update, Divided Interest," ~~,~~ which must be submitted for a water right that will be divided;

(aa) and (bb) remain the same but are renumbered (bb) and (cc).

~~(cc)~~(dd) Form No. 644, "Notice of Change in Appropriation Right for a Replacement Point of Diversion," ~~,~~ which must be submitted for replacement of surface water points of diversion under ~~85-2-402(18), MCA~~ [HB 432 (2025)];

(dd) and (ee) remain the same but are renumbered (ee) and (ff).

~~(ff)~~(gg) Form No. 647, "Notice of Completion of Emergency Fire Protection Development," ~~,~~ which must be submitted for groundwater developments by

local governmental fire agencies organized under Title 7, chapter 33, MCA, for emergency fire protection;

(hh) Form No. 650, “Temporary Lease of Appropriation Right,” which must be submitted to apply for a temporary lease under [SB 178 (2025)];

(gg) through (ii) remain the same but are renumbered (ii) through (kk).

~~(jj)~~(ll) Form No. 654, "Public Comment on a Draft Preliminary Determination," which must be submitted for public comment under 85-2-307(4), MCA; ~~and~~

~~(kk)~~(mm) Form No. 655, "Application Amendment Form," which must be submitted to modify an application under ARM 36.12.1401~~.~~;

(nn) Form No. 656, "Notice of Change in Appropriation Right for Stock Tanks," which must be submitted for a notice filed under [HB 432 (2025)];

(oo) Form No. 657, "Notice of Change in Appropriation Right for Municipal Use," which must be submitted for a notice filed under [HB 432 (2025)];

(pp) Form No. 658, "Petition for Reduction, Modification, or Revocation of a Provisional Permit," which must be submitted for a petition filed under 85-2-313, MCA;

(qq) Form No. 659, "Response to Petition for Reduction, Modification, or Revocation of a Provisional Permit," which must be submitted for a response filed under 85-2-313, MCA; and

(rr) Form No. 670, "Waiver of Adverse Effect," which must be submitted for a waiver filed under [SB 190 (2025)].

Authorizing statute(s): 85-2-113, MCA

Implementing statute(s): 85-2-113, 85-2-302, 85-2-306, 85-2-307, 85-2-311, 85-2-316, 85-2-402, 85-2-424, 85-20-401, MCA; [SB 178 (2025), HB 432 (2025)]

Reasonable Necessity Statement

The amendments to this rule are associated with new forms established by legislation during the 2025 legislative session (SB 178, HB 432, HB 441, HB 681). The waiver of timelines form is being struck because waivers of timeline are not applicable to the permit/change process after the effective date of HB 114 (2023 legislative session).

36.12.103 FORM AND SPECIAL FEES

(1) remains the same.

(2) The department will assess the following filing fees:

(a) through (c) remain the same.

(d) $500 for Form No. 600P, Permit Preapplication Meeting. This fee will be credited to the filing fee of Form No. 600 for preapplication meetings that meet the requirements of ARM 36.12.1302;

~~(d)~~(e) $250 for a Notice of Completion of Groundwater Development, Form No. 602~~, filed for groundwater developments with a maximum use of 35 GPM or less, not to exceed ten acre-feet per year~~;

(f) $250 for a Request for Extension for Authorized Notice of Intent to Appropriate Groundwater, Form No. 602E;

(g) $400 for a Notice of Intent to Appropriate Groundwater, Form No. 602I;

(e) and (f) remain the same but are renumbered (h) and (i).

(j) $500 for Form No. 606P, Change Preapplication Meeting. This fee will be credited to the filing fee of Form No. 606 for preapplication meetings that meet the requirements of ARM 36.12.1302;

~~(g)~~(k) $400 for an Application to Change a Water Right, Form No. 606~~, in the following instances:~~

~~(i)~~ if the change application concerns a replacement well greater than 200 feet from the original well ~~35 GPM or ten acre-feet, or a municipal well that exceeds 450 GPM~~, or replacement reservoir located on the same source; ~~or~~

~~(ii) if the change application concerns only moving or adding stock tanks to an existing system;~~

(h) remains the same but is renumbered (l).

~~(i)~~(m) $100, plus $20 for each water right transferred after the first water right, for a Water Right Ownership Update, Form No. 608. The total amount shall not exceed $600. No fee is required for removing a deceased person from a record of ownership;

(j) through (m) remain the same but are renumbered (n) through (q).

~~(n)~~(r) ~~$150~~ 400 for a Notice of Change in Appropriation Right for a Replacement Well ~~Notice~~, Form No. 634;

~~(o)~~(s) ~~$200~~ 400 for a Notice of Change in Appropriation Right for Redundant Water Supply Well Construction ~~Notice~~, Form No. 635;

(p) through (t) remain the same but are renumbered (t) through (x).

~~(u)~~(y) $400 for Form No. 644, Notice of Change in Appropriation Right for a Replacement Point of Diversion;

(v) through (x) remain the same but are renumbered (z) through (bb).

(cc) $400 for Form No. 650, Temporary Lease of Appropriation Right;

(y) and (z) remain the same but are renumbered (dd) and (ee).

~~(aa) $500 for Form No. 600P, Permit Preapplication Meeting. This fee will be credited to the filing fee of Form No. 600 for preapplication meetings that meet the requirements of ARM 36.12.1302; and~~

~~(bb) $500 for Form No. 606P, Change Preapplication Meeting. This fee will be credited to the filing fee of Form No. 606 for preapplication meetings that meet the requirements of ARM 36.12.1302.~~

(ff) $400 for Form No. 656, Notice of Change in Appropriation Right for Stock Tanks;

(gg) $400 for Form No. 657, Notice of Change in Appropriation Right for Municipal Use; and

(hh) $250 for Form No. 658, Petition for Reduction, Modification, or Revocation of a Provisional Permit.

(3) There shall be no fees charged for filing the following forms:

(a) through (e) remain the same.

~~(f) Form No. 639, Waiver of Timelines;~~

(g) and (h) remain the same but are renumbered (f) and (g).

~~(i)~~(h) Form No. 654, Public Comment on a Draft Preliminary Determination; ~~and~~

~~(j)~~(i) Form No. 655, Application Amendment Form~~.~~;

(j) Form No. 659, Response to Petition for Reduction, Modification, or Revocation of a Provisional Permit; and

(k) Form No. 670, Waiver of Adverse Effect.

(4) remains the same.

Authorizing statute(s): 85-2-113, MCA

Implementing statute(s): 85-2-113, 85-2-302, 85-2-306, 85-2-307, 85-2-311, 85-2-312, 85-2-314, 85-2-402, 85-2-426, 85-2-436, 85-20-401, MCA; [SB 178 (2025), HB 432 (2025), HB 441 (2025), HB 681 (2025)]

Reasonable Necessity Statement

The amendments to this rule are associated with new forms established by legislation during the 2025 legislative session (HB 432, HB 681, SB 178, HB 441). Fees for each new exception (HB432) were set equal to the current exception fee in Form 644. The Notice of Intent to Appropriate Groundwater and the Request for Extension of Authorized Notice of Intent (HB 681) are new forms and new processes. The bill sponsor and finance and claims committee discussed funding for this bill and agreed that a fee increase should be the mechanism for funding the staff to complete the work within the statutory timelines set by the bill. Fees for these forms were set to provide the necessary revenue from the state special revenue fund based on average annual submittals under the exception to the permitting process in 85-2-306, MCA. The fees for remaining new forms were set based on the estimated time and expenses the department anticipates for processing the form (SB 178, HB 441). The pre-application form and fee are being moved in rule for improved ordering of the rule based on the form number.

36.12.115 WATER USE STANDARDS

(1) remains the same.

(2) The department will use the following standards when reviewing notices or applications for new uses of water:

(a) for domestic use, for one household, the standard shall be based on the residential wastewater treatment design flow rate standards used by the Montana Department of Environmental Quality, and calculated by the number of bedrooms served: ~~1.0 acre-foot per year of water for year-round use;~~

(i)	1 bedroom	150 gpd;
(ii)	2 bedrooms	225 gpd;
(iii)	3 bedrooms	300 gpd;
(iv)	each additional bedroom	add 50 gpd;

(b) remains the same.

(c) for stockwater, a consumptive use of 15 gallons per day or .017 acre-foot per year per animal unit. Animal unit equivalencies for water consumption are set out in ARM 36.12.101 and the DNRC water calculation guide ~~conversion table, Form No. 615~~;

(d) through (6) remain the same.

Authorizing statute(s): 85-2-113, MCA

Implementing statute(s): 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA

Reasonable Necessity Statement

This rule is being amended to modifying domestic use standard to be more reasonable based on actual water use and consistent with Department of Environmental Quality standards commonly used.

36.12.117 OBJECTION TO APPLICATION

(1) A person objecting to a proposed application under 85-2-308,MCA, [HB 432 (2025)], or [SB 178 (2025)], must file an objection to an application on Form No. 611, Objection to Application, which can be obtained from the department, and must comply with the requirements set forth in this rule.

(2) through (5) remain the same.

(6) An Objection to Application is timely if: ~~the postmark date on the form is on or before the objection deadline stated in the public notice of the application. A fax of the Objection to Application form will be accepted, provided the original Objection to Application form is postmarked or hand-delivered timely. Electronic mail (e-mail) submissions of the Objection to Application will not be accepted.~~

(a) for paper objection forms, the form is received by the office specified on the objection form on or before the objection deadline specified in the public notice of the application; or

(b) for electronically submitted objection forms, the form is received on or before the objection deadline stated in the public notice of the application. If a form is submitted electronically, it must be submitted in the manner specified in the public notice.

(7) An Objection to Application filed with the department ~~before an application has been~~ prior to the published objection period will not be accepted and will be returned.

~~(8) Upon receipt of an Objection to Application or response to an Objection Deficiency Notice, the department will place the envelope postmark date on the form. If the postmark date is not legible, the department will assign the date as two days prior to the department's receipt of the objection form. An objector is solely responsible for ensuring timeliness, a legible postmark, and filing of the objections.~~

~~(9)~~(8) An Objection to Application is correct and complete if it includes the following legible information:

(a) through (e) remain the same.

(f) ~~facts indicating that~~ probable, believable facts sufficient to support a reasonable legal theory that the application does not meet one or more of the applicable criteria set forth in 85-2-302, 85-2-311, 85-2-316, 85-2-402, 85-2-407, ~~or~~ 85-2-408, MCA, [HB 432 (2025)], or [SB 178 (2025)]~~. The facts provided must specifically describe why or how one or more of the criteria are not met~~;

(g) through (i) remain the same.

~~(10)~~(9) An objection that is deemed correct and complete and valid pursuant to 85-2-308~~(3)~~(4) and ~~(6)~~(7), MCA, [HB 432 (2025)], or [SB 178 (2025)], may proceed to an administrative hearing. The administrative hearing will be limited to the criteria objected to in the objection. An objector may participate in the administrative hearing only on the criteria to which the objector specifically objected and which is determined valid by the department.

~~(11)~~(10) The department will ~~mail~~ send notice via the objector's preferred means of communication to the objector ~~of the Objection to Application~~ of any deficiencies in the objection. The objector must address the information requested in the Objection Deficiency Notice and ~~must have~~ the response ~~postmarked or hand delivered~~ must be received by ~~to~~ the department within 15 business days from the date on the Objection Deficiency Notice. ~~E-mail~~ Electronic submissions of a response will be accepted.

(12) through (15) remain the same but are renumbered (11) through (14).

~~(16)~~(15) For objections to an application pursuant to 85-2-308, MCA, ~~An~~ an applicant is not required to meet a water quality criterion when a valid water quality objection is not raised or is withdrawn.

~~(17)~~(16) Private agreements between applicants and objectors which provide for the withdrawal of objections and include conditions that must be met by an applicant or objector may not be recognized by the department or included in a granted application. The department will only place a condition on ~~a granted~~ an authorized application if the department determines the condition is necessary to meet the application criteria or protect the rights of other appropriators.

Authorizing statute(s): 85-2-308, MCA; [HB 432 (2025), SB 178 (2025)]

Implementing statute(s): 85-2-308, MCA; [HB 432 (2025), SB 178 (2025)]

Reasonable Necessity Statement

HB 432 includes two authorization types that will be subject to a public notice period for objections. The department is required to adopt rules for these objections and is opting to re-use these existing rules to also apply to these authorization types in HB 432. SB 178 also allows for an objection process and the department is adopting the objection rules for this process to ensure consistency. The department is also proposing changes to its standards for how an objection form can be submitted to allow for electronic submittal of objection forms. The changes also clarify that forms need to be received by the close of the objection period. The United States Postal Service no longer reliably postmarks all mail, leading to a postmark date on mail as no longer a viable option. Electronic submissions are intended to allow an alternative to mailing objections through the postal service. Additional changes to what constitutes a correct and complete objection are being made to help objectors better understand what needs to be included in the objection for it to be considered correct and complete.

36.12.1305 FILING A CHANGE APPLICATION AND FORM ACCEPTANCE

(1) through (3) remain the same.

(4) For proposed water right changes with both temporary and permanent components, one application form may be submitted.

(4) through (7) remain the same but are renumbered (5) through (8).

~~(8) For a change application that only adds stock tanks to an existing stock water system:~~

~~(a) Form No. 606 and any applicable addendum(s) must be completed and must describe the details of the proposed project;~~

~~(b) the applicant must explain the extent of the historical use, including the flow rate and volume, for each water right proposed for change;~~

~~(c) the applicant must provide information to show that the historical diverted flow rate will be adequate for the new use; and~~

~~(d) for changes from instream stock rights based on 85-2-222, MCA, to stock tank(s), the maximum flow rate authorized for the new use will be 35 gallons per minute unless the applicant demonstrates a higher historical rate.~~

Authorizing statute(s): 85-2-113, 85-2-302, MCA

Implementing statute(s): 85-2-302, 85-2-402, MCA

Reasonable Necessity Statement

Upon the effective date of HB 432, changes that add stock tanks to an existing stock water system are exceptions from the full change application process, eliminating the need for (8). The addition of (4) clarifies and codifies current department policy to accept permanent and temporary change components on a single change application.

ADOPT

The rules proposed to be adopted are as follows:

NEW RULE 1 (36.12.124) PUBLIC COMMENT ON A DRAFT PRELIMINARY DETERMINATION

(1) A person filing a public comment regarding a draft preliminary determination or an updated draft preliminary determination issued for a water right application under 85-2-307, MCA must file the comment on Form No. 654, Public Comment on a Draft Preliminary Determination, and must comply with the requirements set forth in this rule.

(2) A separate public comment must be filed for each water right application.

(3) Persons owning separate water rights must each file a separate Public Comment on Draft Preliminary Determination form.

(4) Co-owners (owners of a water right that is not split between the owners) of an undivided water right may file one Public Comment on Draft Preliminary Determination form.

(5) A Public Comment on Draft Preliminary Determination form is timely if:

(a) for paper comment forms, the form is received by the office specified in the public notice of the application on or before the deadline specified in the public notice of the application; or

(b) for electronically submitted forms, the form is received on or before the public comment deadline stated in the public notice of the application. If a form is submitted electronically, it must be submitted in the manner specified in the public notice.

(6) A public comment filed with the department before public notice of an application has been published will not be accepted.

(7) A public comment must be received within the time allowed by the Notice of Opportunity to Provide Public Comment and include the following information:

(a) complete contact information and signature of the commenter or commenter's representative;

(b) the application number and applicant name for which the public comment is submitted;

(c) a statement of the commenter's standing, including an explanation of how the commenter's property, water rights, or interests would be adversely affected by the proposed application. If a commenter is claiming that their water right will be adversely affected if the application were to be granted, the commenter must provide the department-assigned water right number affected and explain why they believe their right will be adversely affected;

(d) identification of one or more criteria that is not adequately addressed in the draft preliminary determination;

(e) for each criterion identified in (d), an explanation of how the draft preliminary determination does not adequately address that criterion.

(8) The department will not consider public comments that:

(a) are not on Form No. 654;

(b) do not include the information required by (7); or

(c) are not received by the deadline in the Notice of Opportunity to Provide Public Comment.

(9) The department's preliminary determination will consider and respond to public comments filed in compliance with (7). As part of the response to public

comments, the department may update technical analyses pursuant to ARM 36.12.1303 by issuing an errata but will not issue a new Technical Analyses Report.

Authorizing statute(s): 85-2-307, MCA

Implementing statute(s): 85-2-307, MCA

Reasonable Necessity Statement

The department is proposing to adopt rules on public comments to an application. The rules provide clarity on how a Public Comment on a Draft Preliminary Determination form can be submitted, what is required to be included in the public comment, and how the department will respond to public comments.

NEW RULE 2 (36.12.810) PROJECT COMPLETION NOTICE

(1) For an appropriation completed after the effective date of this rule, the appropriator must file a correct and complete project completion notice with the department on or before the deadline specified in the permit authorization, including any order to reduce or modify the permit pursuant to 85-2-313, MCA, change authorization, or any written extension of time. A correct and complete project completion notice must be on a form provided by the department.

(2) If a water right has multiple change authorizations issued within the same project completion period, the appropriator may file a single project completion notice for all the authorized changes and the department will verify them at the same time.

(3) A correct and complete project completion notice for a permit must include:

(a) information about all completed elements of the permit;

(b) a certified statement in compliance with 85-2-315, MCA;

(c) a description explaining compliance or deviation from terms, conditions, or restrictions;

(d) if a permit authorization is reduced or modified following the final decree pursuant to 85-2-313, MCA, a description explaining compliance with the order reducing or modifying the permit;

(e) for a permit authorized for a purpose of sale of water or water marketing, records of the maximum annual use of water and copies of all executed contracts for the sale of all water; and

(f) other information deemed necessary by the department.

(4) A correct and complete project completion notice for a change authorization must include:

(a) information about the completed element(s) of the water right authorized for change;

(b) a certified statement in compliance with 85-2-402, MCA;

(c) a description explaining compliance or deviation from terms, conditions, or restrictions;

(d) for a change authorized for a purpose of sale of water or water marketing, records of the maximum annual use of water and copies of all executed contracts for the sale of all water; and

(e) other information deemed necessary by the department.

(5) For a project completion notice filed with the department prior to the effective date of this rule, the department will consider the information required by (3) for a permit or (4) for a change to determine whether the project completion notice includes adequate information.

(6) If the department determines a project completion notice is not correct and complete or does not include adequate information, it shall notify the appropriator of any defects and identify the type of information required to be submitted in response.

(7) The appropriator may provide information in response to the notice of defects within 45 days, unless the written notice provides for a different deadline. If the appropriator does not provide the requested information within the time provided, the department will verify whether the appropriation was completed in substantial accordance with the permit or change authorization based on the information contained in the project completion notice and other records and evidence available to the department.

(8) The department may inspect the completed appropriation any time after a project completion notice is filed.

(9) If a project completion notice for a permit was verified prior to the effective date of this rule, and the permit is reduced or modified following final decree pursuant to 85-2-313, MCA, the appropriator is required to file a subsequent project completion notice. Such a subsequent project completion notice is subject to the applicable sections of this rule.

Authorizing statute(s): 85-2-113, 85-2-402, MCA

Implementing statute(s): 85-2-310, 85-2-311, 85-2-312, 85-2-313, 85-2-314, 85-2-315, 85-2-402, MCA

Reasonable Necessity Statement

HB 441 from the 2025 legislative session clarifies considerations for verification of a permit or change authorization and issuance of a certificate of water right. NEW RULE 2 is necessary to define the requirements for a project completion notice, which must be filed prior to the department's verification of a permit or change authorization.

NEW RULE 3 (36.12.811) PERMIT VERIFICATION

(1) The department will conduct a comparative analysis of the information provided in the project completion notice and the permit authorization, including any reduction of modification of the permit pursuant to 85-2-313, MCA, to verify whether the appropriation was completed in substantial accordance with the permit authorization and any reduction or modification. The department will review all relevant information within its possession.

(2) The department will use the water use standards applied at the time the permit was authorized to determine if the elements of the completed appropriation are in substantial accordance with the authorization.

(3) Corrections to legal land descriptions due to improved mapping of township, range, section, and 1/4 section may be considered in substantial accordance with the point of diversion and place of use element(s) of the water right.

(4) The department will evaluate whether the following information identified in the project completion notice is in substantial accordance with the permit authorization, including any reduction or modification of the permit pursuant to 85-2-313, MCA:

(a) the source of supply;

(b) the flow rate, which may not exceed the authorized amount;

(c) the total diverted volume, which may not exceed the authorized amount;

(d) the period of diversion, which may not exceed the authorized period;

(e) the period of use, which may not exceed the authorized period;

(f) the point of diversion, which may not be completed outside the legal land description authorized;

(g) the place of use, which may not be completed outside the legal land description authorized;

(h) the purpose of use matches the authorized purpose of use;

(i) if applicable, the place of storage, including:

(i) the storage capacity, which may not exceed the authorized amount;

(ii) the surface area, which may not exceed the authorized amount; and

(iii) the place of storage location, which may not be completed outside the legal land description authorized;

(j) if applicable, the consumptive volume, which may not exceed the volume authorized; and

(k) if applicable, the description explaining compliance or deviation from terms, conditions, or restrictions.

(5) The department shall document its findings of substantial accordance on a verification abstract.

Authorizing statute(s): 85-2-113, MCA

Implementing statute(s): 85-2-310, 85-2-311, 85-2-312, 85-2-313, 85-2-314, 85-2-315, MCA

Reasonable Necessity Statement

HB 441 from the 2025 legislative session clarifies considerations for verification of a permit and issuance of a certificate of water right. NEW RULE 3 is necessary to define how the department will evaluate substantial accordance with the terms, conditions, restrictions, and limitations of the permit authorization for a completed appropriation.

NEW RULE 4 (36.12.812) CHANGE VERIFICATION

(1) The department will conduct a comparative analysis of the information provided in the project completion notice and the change authorization to verify whether the appropriation was completed in substantial accordance with the change authorization. The department will not evaluate any elements of the water right not authorized for change. The department will review all relevant information within its possession.

(2) The department will use the water use standards applied at the time the change was authorized to determine if the elements of the completed appropriation are in substantial accordance with the authorization.

(3) Corrections to legal land descriptions due to improved mapping of township, range, section, and 1/4 section may be considered in substantial accordance with the point of diversion and place of use element(s) of the water right.

(4) The department will evaluate whether the following information identified in the project completion notice is in substantial accordance with the change authorization:

(a) for a change in point of diversion, the flow rate, which may not exceed the authorized amount, and the point of diversion, which may not be completed outside the legal land description authorized;

(b) for a change in place of use, the place of use, which may not be completed outside the legal land description authorized;

(c) for a change in the purpose of use, the completed purpose of use, and the consumptive use volume, which may not exceed the historical consumptive use volume of the water right;

(i) for a change in purpose to water marketing, the volume of the water marketing purpose will be limited to the maximum annual use proven by the appropriator;

(d) for a change in place of storage or addition of storage, the completed place of storage, which includes:

(i) the storage capacity, which may not exceed the authorized amount;

(ii) the surface area, which may not exceed the authorized amount;

(iii) the consumptive use volume, which may not exceed the authorized amount;

(iv) the place of storage location, which may not be completed outside the legal land description authorized; and

(e) for any type of authorized change, if applicable, the description explaining compliance or deviation from terms, conditions, or restrictions.

(5) The department shall document its findings of substantial accordance on a verification abstract.

Authorizing statute(s): 85-2-113, 85-2-402, MCA

Implementing statute(s): 85-2-312, 85-2-314, 85-2-315, 85-2-402, MCA

Reasonable Necessity Statement

HB 441 from the 2025 legislative session modified the considerations for verification of a completed change authorization. NEW RULE 4 is necessary to define how the department will evaluate substantial accordance with the terms, conditions, restrictions, and limitations of the change authorization for a completed change.

NEW RULE 5 (36.12.813) VERIFICATION DECISION

(1) If, after final decree in the respective administrative basin, the department determines that an appropriation was completed in substantial accordance with a permit authorization, including any reduction or modification of the permit pursuant to 85-2-313, MCA, or change authorization, it shall issue a certificate of water right.

(2) If the department determines that an appropriation was not completed in substantial accordance with a permit authorization, including any reduction or modification of the permit pursuant to 85-2-313, MCA, or change authorization, the department shall send the completed verification abstract to the appropriator. The verification abstract shall include a statement of the department's proposed action.

(3) Within 30 days of issuance of the verification abstract, the appropriator may:

(a) provide the department with a written plan to comply in substantial accordance with the authorization; or

(b) file a written request for a show cause hearing in accordance with 85-2-314, MCA, to show why the authorization should not be revoked or modified.

(4) If the department does not receive notice of the appropriator's decision in (3) within 30 days of issuance of the verification abstract, the department will proceed with the proposed action in (2).

(a) If the proposed action is to modify the permit or change, the department will complete the modification and issue a certificate of water right.

(b) If the proposed action is to revoke the permit or change, the department will complete the action, and no certificate of water right will be issued.

(5) If the appropriator submits a plan pursuant to (3)(a), the department shall issue a written decision approving or denying the plan within 30 days.

(a) Written approval of a plan may suspend action on verification of the permit or change authorization for up to two years and must include a deadline for the appropriator to submit written certification that the plan achieved compliance with the authorization within the time provided for by the department, along with any other requirements deemed necessary by the department.

(b) If the department denies the plan or determines that the certification pursuant to (5)(a) does not establish the appropriation was completed in substantial accordance with the authorization, the appropriator may request a show cause hearing in accordance with 85-2-314, MCA, to show why the authorization should not be revoked or modified within 30 days of the department's denial or determination.

(6) If the appropriator does not request a show cause hearing pursuant to (3)(b) or (5)(b), the department will proceed with its recommendation to revoke or modify the authorization.

(a) If the proposed action is to modify the permit or change, the department will complete the modification and issue a certificate of water right.

(b) If the proposed action is to revoke the permit or change, the department will complete the action, and no certificate of water right will be issued.

(7) If an owner of record finds an error in the department verification of a permit or change authorization, they may provide written notice of the error and what correction is needed on a form provided by the department. The department may evaluate the notice and correct the error.

Authorizing statute(s): 85-2-113, 85-2-402, MCA

Implementing statute(s): 85-2-313, 85-2-314, 85-2-315, 85-2-402, MCA

Reasonable Necessity Statement

HB 441 from the 2025 legislative session modified the considerations for verification of a completed change authorization. NEW RULE 5 details how the department will proceed with its verification findings and includes due process for a water user if the department determines their appropriation was not completed in substantial accordance. NEW RULE 5 also provides that the department can correct errors on a verified permit or change authorization.

NEW RULE 6 (36.12.814) HEARING AND FINAL ACTION

(1) If a show cause hearing is requested pursuant to NEW RULE 5, it is the appropriator's burden to demonstrate by a preponderance of the evidence why the authorization should not be revoked or modified as provided in the verification abstract recommending revocation or modification of the permit or change.

(2) A show cause hearing under this rule shall be conducted pursuant to the procedural rules in ARM Title 36, chapter 12, subchapter 2.

(3) Following the show cause hearing, the hearing examiner may adopt the department's recommendation in the verification abstract, modify the verified abstract, or remand to the department with instructions. The department's records must be updated according to the final order issued by the hearing examiner.

Authorizing statute(s): 85-2-113, 85-2-402, MCA

Implementing statute(s): 85-2-314, 85-2-315, 85-2-402, MCA

Reasonable Necessity Statement

HB 441 from the 2025 legislative session modified the considerations for verification of a completed change authorization. NEW RULE 4 builds on NEW RULE 5 to explain the hearings process that would occur as part of the due process for a water user if the department determines their appropriation was not completed in substantial accordance.

NEW RULE 7 (36.12.2102) TEMPORARY LEASE OF A WATER RIGHT

(1) An appropriator proposing to temporarily lease a water right pursuant to [SB 178 (2025)], must file an application with the department. An application may be filed only by the owner of record of the water right proposed for lease.

(2) The applicant must provide evidence that the water right has been used within the five years prior to the date an application is filed. Evidence of use under this section includes, but is not limited to the following:

(a) dated photographs or aerial imagery demonstrating use of water;

(b) notarized affidavit(s);

(c) power bills, if the conveyance system includes a pump;

(d) water use measurement records; or

(e) crop production records.

(3) If the department previously identified the historical consumptive use of the water right proposed for lease as part of an earlier change authorization, the department may reuse that calculation when reviewing an application for a temporary lease. If the historical consumptive use of the water right proposed for lease has not been calculated by the department through a previous change application, the department will use the following standards for estimating consumptive use of the water right when reviewing an application for a temporary lease:

(a) the consumptive volume for irrigation is the lesser of:

(i) crop consumptive use as calculated using the methodology from ARM 36.12.1902(14) through (16)(f); or

(ii) 2.0 acre-feet per acre irrigated;

(b) the consumptive volume for domestic or multiple domestic use is 10% of the assigned volume for the respective purpose;

(c) the consumptive volume for lawn and garden, shrubbery, and shelterbelts is 1.75 acre-feet per acre per year based on 70 percent of 2.5 acre-feet per acre per year;

(d) the consumptive volume for stockwater is 15 gallons per day or 0.017 acre-foot per year per animal unit based on ARM 36.12.115. Animal unit equivalencies for water consumption are set out in ARM 36.12.101 and the DNRC water calculation guide;

(e) if a place of storage is being discontinued for the duration of the temporary lease, the consumptive use from evaporative losses as calculated based on ARM 36.12.116; and

(f) other consumptive uses not covered in this section must be evaluated, calculated, and justified by the applicant. The evaluation must include an explanation of how the water is beneficially used for the purpose and how any wastewater or waste disposal occurs.

(4) An application must include a statement of potential adverse effects and description of the planned actions the applicant will take which demonstrate no adverse effect on other water rights.

(a) The applicant's statement must explain what potential adverse effect could occur from the change in use under the temporary lease and how they made that determination.

(b) The applicant's description of planned actions must document the effects to other water rights including the following:

(i) the effect to water rights using the same point of diversion;

(ii) the effect that discontinued use of all or a portion of the leased water right will have on other water users; and

(iii) the effects of any changes to the historic diversion pattern including rate and timing.

(5) If storage is being temporarily added, the applicant must identify the capacity of the storage facility and how the capacity was calculated.

(6) At minimum, the department will identify and provide written notice to all owners of record of water rights that according to the records of the department may be affected by the proposed lease of water.

Authorizing statute(s): 85-2-113, MCA

Implementing statute(s): [SB 178 (2025)]

Reasonable Necessity Statement

SB 178 from the 2025 legislative session created a new process allowing a temporary lease of a water right. NEW RULE 7 is necessary to establish the information necessary to meet the application requirements and what the department will look at when evaluating a temporary lease application.

Fiscal Impact

Pursuant to 2-4-302(1)(c), MCA, based on 2025 application statistics, the department estimates the monetary impact from the increase in fees set forth in the proposed amendments to ARM 36.12.103 as follows:

Subsection	Cumulative annual amount	Persons affected annually
36.12.103(2)(f)	$221,625	886
36.12.103(2)(g)	$1,182,000	2955
36.12.103(2)(m)	$-23,400	234*
36.12.103(2)(r)	$8,800	44
36.12.103(2)(s)	$1,000	5
36.12.103(2)(cc)	$14,400	36
36.12.103(2)(ff)	$0	**
36.12.103(2)(gg)	$2,000	5***
36.12.103(2)(hh)	$15,000	60****

*The cumulative annual amount is negative because the rule change reduces the number of ownership update filings DNRC will receive by approximately 2% per year.
**The fee for adding/moving stock tanks is not changing. The process is just changing for these to be allowed as an exception to the full change application process.
***This is a new process and it is unknown how many municipalities may qualify for this exception. DNRC is estimating that 5 applications per year will be submitted.
****This is a new process. For fiscal impact, DNRC estimates that the filing of petitions will be at a similar occurrence as the filing of objections to a permit (5% filing rate).

Small Business Impact

The department has determined that the class or group of businesses that will be affected by this proposed rulemaking are those businesses which need a water right for their business operations. The department does not believe the proposed rulemaking will have a significant and direct impact on small businesses. Many businesses that need water will obtain that water through a public system. In those cases, the small business does not actually need to obtain a water right as the water right is held by the owner of the public system. The department has completed a small business impact analysis, which is available upon request.

Bill Sponsor Notification

The bill sponsor contact requirements apply and have been fulfilled. Two primary bill sponsors (HB 441 and SB 178) were contacted by e-mail and by USPS first class mail on May 13, 2025. Two additional primary bill sponsors (HB 432 and HB 681) were contacted by e-mail on May 19, 2025.

Interested Persons

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail and/or mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person or may be made by completing a request form at any rules hearing held by the department.

Rule Reviewer

Brian Bramblett

Approval

Amanda Kaster, Director

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-91.1

Summary

Adoption of NEW RULES 1 through 10 and repeal of ARM 36.25.143, 36.25.144, 36.25.145, 36.25.146, 36.25.149, 36.25.150, 36.25.152, 36.25.153, 36.25.154, 36.25.155, 36.25.156, 36.25.157, 36.25.161, 36.25.162, 36.25.163, 36.25.164, 36.25.165, 36.25.166, and 36.25.167 pertaining to recreational use of state trust land

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Hearing Date and Time

Friday, August 8, 2025, at 9:00 a.m.

Hearing Information

A public hearing will be held at the Department of Natural Resources and Conservation Building, Montana Conference Room, first floor, located at 1539 Eleventh Avenue, Helena, Montana.

Virtual Hearing Information

Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting:

1) https://mt-gov.zoom.us/j/83577012731?pwd=jWchah4QdK0d5wlHAJ0Cca4LJaxp5C.1, Meeting ID: 835 7701 2731, Password: 124737; or

2) Dial by telephone: +1 646 558 8656, Meeting ID: 835 7701 2731; Password: 124737

Find your local number: https://mt-gov.zoom.us/u/kBkeouRAL

Comments

Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the contact information listed below. Comments must be received by Friday, August 8, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, August 1, 2025, at 5:00 p.m.

Contact

Jamie Price, Rules Coordinator
(406) 444-6615
DNRCOAH@mt.gov
Montana Relay 711

General Reasonable Necessity Statement

In support of the Governor's Red Tape Relief Initiative, the Department of Natural Resources and Conservation (department) is conducting a comprehensive review of the administrative rules for recreational use of state trust land. This review focuses on updating rules to current standards and procedures; eliminating unnecessary or redundant regulations; replacing out-of-date terminology; eliminating reference to the expired Recreational Use Advisory Committee; and restructuring the rules for consistency, simplicity, and ease of use for the public and staff. Following consideration of the department's suggested changes, the Board of Land Commissioners determined it is reasonably necessary to repeal 19 rules and adopt ten new rules to align with the Red Tape Relief Initiative. The simplified rules will increase department efficiency by standardizing the procedures used statewide and improve customer service by making the rules easier to find and understand. If an additional specific basis for a proposed action exists, the department will identify the reason immediately following the specific rule.

Rulemaking Actions

ADOPT

The rules proposed to be adopted are as follows:

NEW RULE 1 (36.25.1201) OVERVIEW

(1) [NEW RULE 1 through NEW RULE 10] regulate the recreational use of state trust land managed by the Department of Natural Resources and Conservation. These lands appear in light blue on most land status maps.

(2) The Board of Land Commissioners has the duty and authority to manage state trust land under Article X, section 4 of the Montana Constitution. Under 77-1-301, MCA, the Department of Natural Resources and Conservation manages state trust lands under the direction of the board.

(3) State trust land is open to recreational use subject to legal access, closures, and restrictions in accordance with 77-1-203(3), MCA.

(4) The purpose of [NEW RULE 1 through NEW RULE 10] is to provide for reasonable recreational use of legally accessible state trust land while also considering the needs of state trust land lessees. These rules should be interpreted to accomplish this purpose.

(5) These rules regulate general recreational use and special recreational use, as defined in [NEW RULE 2]. Special recreational use requires additional licensing as described under [NEW RULE 9].

(6) The following state lands are not subject to [NEW RULE 1 through NEW RULE 10]:

(a) lands subject to a lease, license, or easement from the department to a government entity for a public park or fishing access site;

(b) the surface, beds, and banks of lakes, rivers, and streams that are open to the general public for recreational purposes under the stream access law;

(c) highways and highway rights-of-way;

(d) department administrative sites;

(e) campus grounds, experiment station grounds, and other lands owned by the university system;

(f) lands administered by the Department of Corrections; and

(g) any lands where the department or the board does not own the surface.

(7) Whenever in [NEW RULE 1 through NEW RULE 10], the submission of a document or petition is required to be filed at an area or unit office, it must be submitted to the area or unit office that administers the applicable state trust land.

(8) Whenever in [NEW RULE 1 through NEW RULE 10], a hearing is required to be held in an "area," the term "area" refers to the department area in which the subject

land is located. The hearing may be held, at the department's discretion, at any location within that area.

Authorizing statute(s): 77-1-209, 77-1-804, 77-1-806, MCA

Implementing statute(s): 77-1-801, 77-1-802, 77-1-803, 77-1-804, 77-1-805, 77-1-806, 77-1-807, 77-1-808, 77-1-809, 77-1-810, MCA

Reasonable Necessity Statement

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule consolidates and simplifies language from original ARM 36.25.143 and 36.25.144 related to intent and applicability, while retaining the intent of the original rules.

NEW RULE 2 (36.25.1202) DEFINITIONS

Wherever used in [NEW RULE 1 through NEW RULE 10], unless a different meaning clearly appears from the context:

(1) "Board" means the Board of Land Commissioners, as described in the Montana Constitution.

(2) "Closure" means prohibition of all general recreational use.

(3) "Customary access point" means each outer gate and each normal point of access to the land, including both sides of a water body crossing the land where the water body intersects an outer boundary line.

(4) "Dedicated county road" means a county road that has been created by means of donation of a landowner and acceptance by a county under statutory or common law dedication procedures.

(5) "Department" means the Department of Natural Resources and Conservation.

(6) "Director" means the director of the Department of Natural Resources and Conservation.

(7) "Drop box" means a container in which a person using state trust land for recreation may leave notice when required to do so under these rules.

(8) "Emergency" means a situation that:

(a) poses an imminent threat of personal harm, property damage, or significant environmental harm;

(b) would be substantially lessened or alleviated by a recreational use closure; and

(c) requires faster action than the normal closure procedure.

(9) "General recreational use" means non-concentrated, non-commercial recreational activity.

(a) The term does not include:

(i) taking or disturbing archaeological, historical, or paleontological items;

(ii) mineral exploration or mining;

(iii) taking or disturbing valuable rocks or minerals;

(iv) cutting or gathering firewood, standing trees, or downed trees;

(v) trapping; or

(vi) special recreational use.

(10) "Growing crop" means plants grown for harvest, between planting and harvest time. The term does not include grass used for grazing or trees.

(11) "Lease" means a lease or land use license, other than a recreational use or special recreational use license, allowing use of state trust land. The term does not include a mineral lease unless it is preceded by the word "mineral."

(12) "Legally accessible" means state trust land that can be reached by open road, public right-of-way, or public easement; public waters, including streams open to the public for recreational purposes under the stream access law; adjacent public land open to public use; or adjacent private land if permission to cross the land has been secured from the landowner. Accessibility by aircraft does not render lands legally accessible under this definition.

(13) "Lessee" means a person who holds a lease.

(14) "Livestock" means cattle, sheep, swine, goats, privately owned bison and elk, horses, llamas, mules, donkeys, and other animals used for the protection of such animals.

(15) "Motorized vehicle" means a vehicle powered by a motor, including but not limited to cars, trucks, motorcycles, mopeds, and all-terrain vehicles. The term does not include snowmobiles.

(16) "Open road" means a road usable by the public under state or federal law. This includes federal roads, state roads, dedicated county roads, and other roads on

state trust land that have been designated by the department as open for motorized use.

(17) "Recreational use license" means a license authorizing general recreational use of state trust land.

(18) "Restriction" means a limitation on recreational use activities.

(19) "Special recreational use" means:

(a) commercial or concentrated recreational activity, including any recreational use that is organized, developed, or coordinated, whether for profit or otherwise; or

(b) other recreational activity that will result in unique impacts as determined by the department or that would conflict with a restriction described under [NEW RULE 4].

(20) “Trust land administration account” means the account established by 77-1-108, MCA, from which expenses of the recreational use program are paid.

Authorizing statute(s): 77-1-209, 77-1-804, 77-1-806, MCA

Implementing statute(s): 77-1-101, 77-1-801, 77-1-802, 77-1-804, 77-1-805, 77-1-806, MCA

Reasonable Necessity Statement

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule updates and simplifies language from original ARM 36.25.145 related to definitions, while retaining the intent of the original rules. These changes also clarify the different types of special recreational use.

NEW RULE 3 (36.25.1203) LICENSE REQUIREMENTS FOR GENERAL RECREATION

(1) A recreational use license is required by any person 12 years of age or older for general recreational use of state trust land. Whether there is an agreement between the department and the Department of Fish, Wildlife and Parks pursuant to 77-1-815, MCA, will determine which of the following two licenses are required:

(a) a “conservation license” is required if the department and the Department of Fish, Wildlife and Parks consent to and sign an agreement for general recreational use pursuant to 77-1-815, MCA; or

(b) a “state lands recreational use license” is required if the department and the Department of Fish, Wildlife and Parks do not have an agreement for general recreational use pursuant to 77-1-815, MCA.

(2) If a state lands recreational use license is required:

(a) The license is issued for a 12-month period beginning on March 1 of each year and expiring on the last day of February of the next year.

(b) The cost is:

(i) $5 for persons 17 years of age or younger or 60 years of age or older.

(ii) $10 for persons who are older than 17 and younger than 60.

(iii) $20 for a family living within the same household.

(c) A person may purchase the license for a relative.

Authorizing statute(s): 77-1-106, 77-1-209, 77-1-802, 77-1-804, MCA

Implementing statute(s): 77-1-106, 77-1-801, 77-1-802, 77-1-804, 77-6-210, MCA

Reasonable Necessity Statement

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule simplifies language from original ARM 36.25.146 related to license requirements, while retaining the intent of the original rule.

NEW RULE 4 (36.25.1204) GENERAL RECREATION RULES AND RESTRICTIONS

The following provisions apply to persons engaging in general recreational use of state trust land:

(1) A recreational use license as described in [NEW RULE 3] is required by any person 12 years of age or older.

(2) A recreationist must present their license upon request by a Montana game warden or department employee.

(3) For motorized vehicle use:

(a) Recreational motorized vehicle use is restricted to open roads.

(b) A person holding a "permit to hunt from vehicle" issued by the Department of Fish, Wildlife and Parks may drive on any road that is not closed by the department by sign or barrier.

(c) Parking is allowed on open roads in accordance with applicable traffic regulations, and within 50 feet of a customary access point that is accessible by open road. A parked vehicle must not block vehicle access or gates, or cause damage to the land or improvements.

(4) For snowmobile use:

(a) Snowmobile use is allowed on open roads where permitted by applicable traffic regulations.

(b) Off-road snowmobile use is only allowed on unleased land. It is not allowed where expressly prohibited by the department.

(5) For firearm use:

(a) A person may not use a firearm negligently as defined in 45-2-101, MCA.

(b) A recreationist may not discharge a firearm on state trust land within 1/4 mile of an inhabited dwelling or an outbuilding in close proximity to an inhabited dwelling without permission of an inhabitant. Temporary absences of inhabitants do not render a dwelling uninhabited.

(6) Campfires are prohibited on leased or licensed land unless in a designated campground.

(7) Fireworks are prohibited.

(8) For overnight use:

(a) Overnight use of leased or licensed land must be within 200 feet of a customary access point or public waters such as a stream open to the public for recreational purposes pursuant to the stream access law under 23-2-302, MCA.

(b) Motorized vehicles and camping trailers must be parked according to the requirements described in (3)(c).

(c) Overnight use may not exceed the following time limits:

(i) In a designated campground, the maximum stay is 16 days in a 30-day period.

(ii) For dispersed camping outside of a designated campground, the maximum stay is:

(A) two consecutive days on leased or licensed land; or

(B) 16 days in a 30-day period on land that is not leased or licensed.

(d) A recreationist may keep horses on state trust land overnight, subject to the following restrictions:

(i) horses must not be allowed to remain in stream riparian zones for more than one hour;

(ii) only certified noxious weed seed free forage may be brought onto state trust land; and

(iii) horses must be restrained to minimize impacts to vegetation.

(9) Pets must be kept on a leash or otherwise controlled to prevent harassment of livestock or wildlife.

(10) Food storage requirements under ARM 12.12.109(1)(a), (b), and (c) apply from March 1 to December 1, or for an extended period of time if posted on site, on state trust land:

(a) located in any county west of the Continental Divide; or

(b) in Glacier, Toole, Pondera, Teton, Lewis and Clark, Cascade, Jefferson, Broadwater, Meagher, Beaverhead, Madison, Gallatin, Park, Sweet Grass, Stillwater, Carbon, Liberty, Blaine, Hill, Chouteau, Fergus, Judith Basin, Wheatland, or Golden Valley Counties.

(11) Littering is prohibited.

(12) A recreationist may not interfere with the legitimate lease management activities of lessees or their agents.

(13) A recreationist may not interfere with a person making lawful recreational use of state trust land.

(14) The department may impose additional restrictions pursuant to 77-1-804(6)(h), MCA, to protect public safety, property, or the environment. A recreationist may not violate site specific restrictions.

(15) The department may close specific state trust land to recreational use pursuant to [NEW RULE 6]. A recreationist may not violate a closure.

(16) State trust land enrolled within a wildlife management area or a block management area are subject to the management area rules set by the Department of Fish, Wildlife and Parks. A recreationist may not violate the rules applicable to state trust land enrolled in a wildlife management area or block management area.

(17) Recreationists are responsible for determining whether state trust land is legally accessible.

(18) A recreationist may not trespass onto private lands, regardless of the absence of fencing or signage.

(19) A person who violates a recreational use rule is subject to penalties described in [NEW RULE 10].

Authorizing statute(s): 77-1-209, 77-1-804, MCA

Implementing statute(s): 77-1-804, 77-1-806, MCA

Reasonable Necessity Statement

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule consolidates and simplifies language from original ARM 36.25.149, 36.25.146(5), and 36.25.161(1) and (3) related to general recreational use and restrictions, while retaining the intent of the original rules.

NEW RULE 5 (36.25.1205) NOTICE TO LESSEES PRIOR TO ENTRY

(1) If a lessee wishes to be notified before a recreationist enters the leased land for general recreational use, the lessee shall:

(a) post signs, or duplicates of signs, provided by the department at all customary access points with directions to the appropriate drop box; and

(b) provide a clearly marked drop box at a customary access point for each tract. A lessee of two or more contiguous tracts may provide one drop box if it is placed in a location convenient to each of the tracts.

(2) If there is uncertainty about the location of a customary access point or its convenience, the area manager will decide and the lessee shall install drop boxes in accordance with that determination.

(3) If a lessee has installed signs and a drop box in accordance with (1), a recreationist shall leave a notice in the drop box prior to entering the leased land.

(a) The notice must include:

(i) the recreationist's name, address, and conservation license number;

(ii) the names, addresses, and recreational use license numbers of each person in the party; and

(iii) the dates of use.

(b) The recreationist is responsible for providing paper and a writing utensil to leave the notice.

(c) The notice is valid for up to three consecutive days or until the end of any continuous general recreational use that makes additional notice impractical, such as a back country hunting or fishing trip.

(4) A lessee may not interfere with a person making lawful recreational use of state trust land.

Authorizing statute(s): 77-1-209, 77-1-804, 77-1-806, MCA

Implementing statute(s): 77-1-804, 77-1-806, MCA

Reasonable Necessity Statement

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule consolidates and simplifies language from original ARM 36.25.155 and 36.25.156 related to lessee notification prior to recreational use, and ARM 36.25.146(5) regarding lessee interference with a person making lawful recreational use. The rule change simplifies the signage and notification requirements and consolidate rules related to lessee interactions with recreationists.

NEW RULE 6 (36.25.1207) CLOSURE OF STATE TRUST LAND TO RECREATIONAL USE

(1) The following state trust land is categorically closed to general recreational use:

(a) land leased for cabin sites or home sites;

(b) agriculture lease areas with growing crop;

(c) land leased for military use while military activities are taking place;

(d) land leased for commercial use; and

(e) land under extreme wildfire threat as proclaimed by the department or Governor.

(2) Any person, corporation, organization, or government agency may petition to exclude a specific tract from a categorical closure by following the process described in (7).

(3) The department may close specific tracts of state trust land to recreational use through the process described in (7) for any of the following reasons:

(a) damage attributable to recreational use diminishes the income generating potential of the state trust land;

(b) damage to surface improvements of lessee or mineral lessee;

(c) the presence of threatened, endangered, or sensitive species or plant communities;

(d) the presence of unique or special natural or cultural features;

(e) wildlife protection;

(f) noxious weed control;

(g) the presence of buildings, structures, or facilities;

(h) protection of public safety;

(i) prevention of significant environmental impact;

(j) disruption of calving, lambing, or shipping activities or substantial disruption of livestock use;

(k) an imminent threat, caused by potential substantial public use, of immediate, irreparable property damage or bodily injury on the state tract or adjacent land; or

(l) comparable private land has been made available for public general recreational use through an exchange described in (4).

(4) Any person may request an emergency closure by submitting a written request describing the situation with the area or unit office. The area manager or designee will grant or deny the request no later than five days after it is received.

(a) An emergency closure must be for a specific period of time but may be extended as necessary until the emergency is over.

(b) Upon request of any person, the director or designee will review any emergency closure in effect for longer than five days. The director or designee will approve, modify, or terminate the closure in writing.

(c) The department will attempt to contact the underlying lessee prior to any emergency closure.

(d) The department may, on its own initiative, close state trust land in an emergency.

(5) The department may, after following the process described in (7), enter into a written agreement with a landowner whereby a tract of state trust land is closed in exchange for the landowner's agreement to open private land to general recreational use if all of the following requirements are met:

(a) The private land:

(i) is in the same general area;

(ii) is of equal or greater recreational value to the state tract;

(iii) has equal or greater public access as the state tract; and

(iv) is not normally available for general recreational use upon request by the public.

(b) The private landowner agrees to:

(i) allow general recreational use under restrictions no more stringent than those contained in [NEW RULE 4];

(ii) post department-approved signs at customary access points on the closed state trust land to notify the public of the closure and give directions to the private tract;

(iii) post signs on the private tract advising the public which portion of the tract is open for general recreational use by the public subject to the recreational use license requirement;

(iv) allow access to the private land for employees of the department and Department of Fish, Wildlife and Parks;

(v) not claim funds pursuant to ARM 36.25.158 or 36.25.159;

(vi) hold the department and state harmless from all claims, including those for property damage or personal injury, relating from the acts or omissions of the landowner; and

(vii) meet any other requirements deemed necessary by the department.

(c) The exchange agreement may be canceled by either party with 60-day written notice.

(6) A lessee may create a temporary management closure or restriction on their leased or licensed state trust land.

(a) One of the following situations must exist:

(i) Livestock activities such as calving, lambing, gathering or moving, specialized or intensive breeding, supplemental winter feeding, weaning, or shipping are occurring;

(ii) Weed control treatment is occurring or has recently occurred;

(iii) The land is being irrigated. However, state trust land may not be closed to foot traffic during hunting season under this provision; or

(iv) Recreational use would occur in close proximity to lessee's dwellings or structures. However, the right to enter or exit state trust land may not be denied under this provision.

(b) Temporary management closures and restrictions do not become effective until 24 hours after the following requirements are met:

(i) The lessee notifies the area or unit office of:

(A) the nature of the qualifying situation that exists;

(B) the affected area;

(C) the terms of the closure or restriction; and

(D) the duration.

(ii) The lessee posts all customary access points with signs or duplicates of signs provided by the department. The signs must include the lessee's name, address, phone number, the closure or restriction imposed, the reason for the closure or restriction, the area to which it applies, effective date, and duration.

(c) Any person may object to a temporary management closure or restriction by notifying the area or unit office in writing that:

(i) there is no valid basis for the closure;

(ii) the area of closure is larger than necessary; or

(iii) the duration of the closure is longer than necessary.

(d) The department may object to a temporary management closure.

(e) If an objection is made:

(i) The area manager or designee shall investigate the closure within two working days of receiving the objection.

(ii) The area manager or designee may modify or terminate the temporary closure or restriction after notifying the lessee and objector of the decision.

(iii) The lessee or objector may appeal the area manager's decision to the director by filing a written appeal to the area office within five business days of receipt of notice.

(iv) The director's decision is binding on the parties. Failure to comply with the director's decision subjects the violator to penalties pursuant to [NEW RULE 10].

(f) The following are general guidelines the department shall use for determining whether the term of a management closure or restriction is reasonable:

(i) for calving or lambing, 60 days;

(ii) for breeding, 30 days;

(iii) for gathering or moving, 1 day;

(iv) for weed treatment, 5 days; and

(v) for livestock concentrated for weaning or shipping:

(A) if fewer than 200 animal units per section are concentrated, 5 days.

(B) if 200 or more animal units per section for weaning and shipping, 30 days.

(g) The department may deviate from the general guidelines in (f) as management circumstances dictate.

(7) Any person, corporation, organization, or government agency may petition the department to close a specific tract of land for a reason listed in (3) or exclude a specific tract of land from a categorical closure.

(a) The petition must be submitted in writing to the area or unit office in which the applicable state trust land is located. To be considered during a calendar year, the petition must be submitted by April 1 of that year, be signed by the petitioner, and must contain the following information:

(i) name, mailing address, and phone number of petitioner;

(ii) description of lands to which the petition applies by legal description, lease number, or other description of the location;

(iii) the reason for the requested action;

(iv) the period for which the requested action is sought; and

(v) supporting documentation.

(b) The department may summarily dismiss a petition with a brief statement of the reasons for dismissal whenever:

(i) the petition is for a closure and is not based on a reason provided in (2);

(ii) the petition is not supported by specific factual allegations, data, or documentation; or

(iii) a petition requesting essentially the same action has been denied in the preceding 365 days unless changed conditions are alleged and documented.

(c) By May 1, the department shall post notice of any valid petitions it has received or initiated at the county courthouse, area offices, and department's main office, and notify any underlying lessees. The notice must:

(i) contain the name of the petitioner, location of the land, and reasons for the proposed action; and

(ii) give the public an opportunity to object to the petition and the objector and the petitioner an opportunity to request, on or before May 20, a public hearing on the proposed action.

(d) An objection must contain the reasons why the petition should not be granted and supporting documentation. An objection may not be considered if it does not.

(e) If a hearing is requested by an objector or petitioner, the department shall hold the hearing in the area of the proposed action as follows:

(i) By June 5, the department shall post public notice of the hearing and notify the petitioner and the affected lessee. The notice must contain the name of the petitioner, location of the land, reason for proposed action and reasons that the hearing has been requested.

(ii) By June 20, an open public hearing must be held in the area of the proposed action. Any interested party may give comments and submit information at the hearing.

(f) The area manager or designee may conduct further investigation.

(g) By July 1, the department shall prepare a written decision and provide a copy to the lessee, petitioner, and any person who filed an objection. The decision shall grant, modify, or deny the petition and state the reasons for the decision.

(h) The petitioner or an objector may appeal the decision to the director by filing a written appeal with the area office within 15 days of receipt of the decision.

(i) If an appeal is received:

(i) The department will notify the opposing party of the appeal and provide an opportunity to respond, including the right to appear at any appellate hearing.

(ii) The appeal may, at the discretion of the director or designee, proceed by written argument, oral argument, or both, at a location designated by the director.

(iii) No party may submit evidence or information that was not submitted at the informal hearing.

(iv) By September 1, the director or designee shall issue a written decision affirming, reversing, or modifying the department's decision.

(j) If a petition is granted, the lessee or department shall post all applicable customary access points with signs provided by the department or duplicated from signs provided by the department.

(8) The department shall maintain a list of closures and restrictions on the department's public website and at the department's main office in Helena.

(9) Except for categorical closures under (1), the department shall review closures at expiration or renewal of the lease for leased tracts and at least every 10 years for unleased tracts. The department may review closures more frequently. After public notice, notice to the lessee, and an opportunity for public comment and hearing, the department may terminate a closure it determines is no longer necessary.

Authorizing statute(s): 77-1-209, 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

Reasonable Necessity Statement

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule consolidates and simplifies language from original ARM 36.25.150, 36.25.152, 36.25.153, and 36.25.154(3) related to recreational use closures while retaining the intent of the original rules.

NEW RULE 7 (36.25.1208) ROADS

(1) Before designating a road on leased state trust land as open for recreational motorized use, the department shall notify the lessee.

Authorizing statute(s): 77-1-209, 77-1-804, MCA

Implementing statute(s): 77-1-804, 77-1-806, MCA

Reasonable Necessity Statement

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule simplifies and clarifies language from original ARM 36.25.161(4) related to open roads, while retaining the intent of the original rules.

NEW RULE 8 (36.25.1209) INTERAGENCY LAND MANAGEMENT AGREEMENTS

(1) State trust land may be enrolled in a block management area or wildlife management area established by the Department of Fish, Wildlife and Parks pursuant to a written agreement executed by the department. No state trust land is included in a management area unless a written agreement is executed by the department.

(2) The department may enroll state trust land into a block management area only if it finds that:

(a) enrollment is in the best interest of the public and the trust;

(b) inclusion would not result in damage to the land;

(c) the proposed block management area contains private land;

(d) the state trust land is contiguous to other land included within the proposed block management area; and

(e) the proposed block management agreement does not conflict with the rights of holders of leases, licenses, or easements.

(3) To request enrollment of state trust land into a block management area, the Department of Fish, Wildlife and Parks must submit a proposal to the department that includes:

(a) a legal description of the affected state trust land;

(b) a description of legal access;

(c) the terms, conditions, and restrictions to be applied to the lands enrolled in the proposed block management area; and

(d) a map of the proposed block management area that identifies state trust land, adjoining public land, and open roads.

(4) A public review process is required only if the proposed block management agreement:

(a) would impose restrictions on recreational use that are more stringent than those contained in [NEW RULE 4]; and

(b) contains state trust land that is:

(i) accessible by open road, public right of way or easement, public waters, or contiguous government-owned land that is open for public use; or

(ii) contiguous at some point to land that is not included within the proposed block management area.

(5) If a public review process is required pursuant to (4):

(a) the department and the Department of Fish, Wildlife and Parks shall give public notice in the newspaper in the area of the proposed block management area and provide a 21-day public comment period;

(b) the department will review and prepare written responses to all substantive comments and shall provide copies to each person who submitted a substantive comment; and

(c) the department may, at its discretion, hold a public hearing in the area of the proposed block management area if it finds that a public comment or a request for a hearing raised a significant question as to whether the proposal is in the best interest of the public or the trust.

(6) A block management agreement that includes state trust land must contain the following provisions:

(a) A recreational use license pursuant to [NEW RULE 3] is required for general recreation.

(b) Motorized vehicle use on state trust land is restricted in accordance with 77-1-804(6)(c), MCA.

(c) If the state trust land meets the criteria in (4), the Department of Fish, Wildlife and Parks shall post signs on state trust land at customary access points that include information about special block management restrictions on recreational use and how access may be obtained.

(d) If a complaint is not resolved to the satisfaction of the department, the department may withdraw state trust land from the block management area.

(7) The department may agree to renew a block management agreement if the agreement continues to meet the criteria in (2) and contain the provisions in (6).

(8) Renewal requires the public review process under (5) only if:

(a) the department determines that a complaint received by Department of Fish, Wildlife and Parks has not been adequately resolved;

(b) public comments or complaints have been received by the Department of Fish, Wildlife and Parks that:

(i) raise significant concern regarding compliance with the agreement; or

(ii) indicate that continued enrollment may not be in the best interest of the public or the trust; or

(c) changes in the agreement impose more stringent restrictions than those contained in the existing agreement.

Authorizing statute(s): 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

Reasonable Necessity Statement

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule consolidates and simplifies language from original ARM 36.25.163, 36.25.164, 36.25.165, 36.25.166, and 36.25.167 related to block management agreements while retaining the intent of the original rules and clarifies enrollment of state trust land into a wildlife management area as contemplated in original ARM 36.25.149(1)(i).

NEW RULE 9 (36.25.1210) SPECIAL RECREATIONAL USE

(1) No special recreational use of state trust land may occur without a special recreational use license.

(2) Special recreational use licenses are issued at department discretion.

(3) The cost of the license is determined by the department based on the full market value of the use. The department may use a competitive bidding process to determine the full market value. If a competitive bid process is used, the department may set a minimum bid amount according to the best interest of the trust.

(4) The department may reject a license application or a competitive bid if acceptance would not be in the best interest of the trust.

(5) The department may grant a license that provides the exclusive authorization for a specific activity in an area. However, even if a license is exclusive, the department may grant other licenses for other types of activities on the same land.

(6) To apply for a special recreational use license, a person must be 18 years of age or older and must submit an application to the area or unit office where the activity is

proposed to occur. Applications must include a description or map of the area proposed for use.

(7) The department must attempt to notify an underlying lessee of a license application.

(8) A license must include terms regulating motorized vehicle use and requiring that only certified weed seed free hay be used on the state trust land. The license may include other use restrictions.

(9) The holder of the special recreational use license shall comply with all provisions of the license.

(10) A license issued under this rule does not prohibit general recreational use of the licensed area.

Authorizing statute(s): 77-1-209, 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

Reasonable Necessity Statement

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule simplifies language from original ARM 36.25.162 related to special recreational use while retaining the intent of the original rule. These changes clarify that the department may reject applications or bids if they are not in the best interest of the trust.

NEW RULE 10 (36.25.1212) PENALTIES

(1) Pursuant to 77-1-804(8), MCA, if the department and the Department of Fish, Wildlife and Parks consent to and sign an agreement for general recreational use as provided in 77-1-815, MCA, a person who violates a department rule that governs general recreational use is guilty of a misdemeanor.

(2) The department may assess a civil penalty of up to $1,000 per day for a violation of [NEW RULE 1 through NEW RULE 9], unless a criminal penalty has been assessed for the violation.

(a) The department shall consider the following factors to determine the amount of a civil penalty:

(i) number of previous violations;

(ii) severity of the infraction; and

(iii) whether the violation was intentional or unintentional.

(b) The penalty may be waived for minor or technical violations.

(c) Before assessing a penalty for a civil violation, the department will give the person cited a violation notice that describes the facts and circumstances alleged to have occurred.

(d) The person has 15 days to respond in writing to the violation notice.

(e) Upon receipt of the response or expiration of the response period, the department shall either withdraw the notice of violation or assess a penalty. The department shall provide notice of its decision by certified mail.

(f) The person may request a hearing within 30 days of receiving the department's notice of penalty assessment. The request for hearing must state the reasons that the person is contesting assessment of the penalty.

(g) If a hearing request is received by the department:

(i) The department shall hold a contested case hearing in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(ii) The hearing must be conducted by a hearing officer appointed by the director.

(iii) After the hearing, the department shall, within 60 days issue its findings of fact and conclusions of law and final order dismissing the violation or assessing a penalty.

(h) A person shall pay an assessed penalty within 30 days of receipt of the notice of decision described under (2)(e), within 30 days of the final order if a hearing is requested, or within such additional time if granted by the department.

(i) The assessment of civil penalty is appealable to district court pursuant to Title 2, chapter 4, part 7, MCA.

Authorizing statute(s): 77-1-209, 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

Reasonable Necessity Statement

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule simplifies language from original ARM 36.25.157 related to penalties, while retaining the intent of the original rules.

REPEAL

The rules proposed to be repealed are as follows:

36.25.143 OVERVIEW OF RECREATIONAL USE RULES

Authorizing statute(s): 77-1-209, 77-1-804, 77-1-806, MCA

Implementing statute(s): 77-1-801 through 77-1-810, MCA

36.25.144 ADMINISTRATION OF RECREATION ON STATE LANDS ADMINISTERED BY THE DEPARTMENT

Authorizing statute(s): 77-1-209, 77-1-804, 77-1-806, MCA

Implementing statute(s): 77-1-801 through 77-1-810, MCA

36.25.145 DEFINITIONS

Authorizing statute(s): 77-1-209, 77-1-804, 77-1-806, MCA

Implementing statute(s): 77-1-101, 77-1-801, 77-1-802, 77-1-804, 77-1-805, 77-1-806, MCA

36.25.146 GENERAL RECREATIONAL USE OF STATE LANDS: LICENSE REQUIREMENT

Authorizing statute(s): 77-1-106, 77-1-209, 77-1-802, 77-1-804, MCA

Implementing statute(s): 77-1-106, 77-1-801, 77-1-802, 77-1-804, 77-6-210, MCA

36.25.149 GENERAL RECREATIONAL USE OF STATE LANDS: RESTRICTIONS

Authorizing statute(s): 77-1-209, 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

36.25.150 GENERAL RECREATIONAL USE OF STATE LANDS: CATEGORICAL CLOSURES

Authorizing statute(s): 77-1-209, 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

36.25.152 GENERAL RECREATIONAL USE OF STATE LANDS: PROCEDURE FOR SITE SPECIFIC CLOSURES

Authorizing statute(s): 77-1-209, 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

36.25.153 MANAGEMENT CLOSURES AND RESTRICTIONS

Authorizing statute(s): 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

36.25.154 RECREATIONAL USE ADVISORY COUNCIL

Authorizing statute(s): 77-1-804, MCA

Implementing statute(s): 77-1-804, 2-15-122, MCA

36.25.155 GENERAL RECREATIONAL USE OF STATE LANDS: NOTICE TO LESSEES OF ALL USES OTHER THAN HORSE USE NOT FOR THE PURPOSE OF LICENSED HUNTING, DISCHARGE OF FIREARMS NOT FOR THE PURPOSE OF LICENSED HUNTING, AND OVERNIGHT USE

Authorizing statute(s): 77-1-209, 77-1-804, 77-1-806, MCA

Implementing statute(s): 77-1-804, 77-1-806, MCA

36.25.156 GENERAL RECREATIONAL USE OF STATE LANDS: NOTICE TO LESSEES OF OVERNIGHT USE, HORSEBACK USE FOR ANY PURPOSE OTHER THAN LICENSED HUNTING, AND FOR DISCHARGE OF A FIREARM FOR ANY PURPOSE OTHER THAN LICENSED HUNTING

Authorizing statute(s): 77-1-804, 77-1-806, MCA

Implementing statute(s): 77-1-804, 77-1-806, MCA

36.25.157 GENERAL RECREATIONAL USE OF STATE LANDS: PENALTIES

Authorizing statute(s): 77-1-209, 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

36.25.161 GENERAL RECREATIONAL USE OF STATE LANDS: OTHER PROVISIONS

Authorizing statute(s): 77-1-209, 77-1-804, MCA

Implementing statute(s): 77-1-804, 77-1-806, MCA

36.25.162 SPECIAL RECREATIONAL USE OF STATE LANDS

Authorizing statute(s): 77-1-209, 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

36.25.163 BLOCK MANAGEMENT AREAS: GENERAL RULES FOR INCLUSION OF STATE LAND

Authorizing statute(s): 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

36.25.164 BLOCK MANAGEMENT AREAS: PROCEDURES FOR INCLUSION OF STATE LAND

Authorizing statute(s): 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

36.25.165 BLOCK MANAGEMENT AREAS: CRITERIA FOR INCLUSION OF STATE LAND

Authorizing statute(s): 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

36.25.166 BLOCK MANAGEMENT AREAS: TERMS OF AGREEMENT

Authorizing statute(s): 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

36.25.167 BLOCK MANAGEMENT AREAS: RENEWAL OF AGREEMENT

Authorizing statute(s): 77-1-804, MCA

Implementing statute(s): 77-1-804, MCA

Small Business Impact

The department has determined that the class or group of businesses that will be affected by this proposed rulemaking are the businesses that hold agriculture or grazing leases on trust land, and businesses that may license trust land for commercial recreational use. The department does not believe the proposed rulemaking will have a significant and direct impact on small businesses. The department has completed a small business impact analysis, which is available upon request.

Bill Sponsor Notification

The bill sponsor contact requirements do not apply.

Interested Persons

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail and/or mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such

written request may be mailed or delivered to the contact person or may be made by completing a request form at any rules hearing held by the department.

Rule Reviewer

Jason Kampman

Approval

Amanda Kaster, Director

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF COMMERCE

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-159.2

Summary

Adoption of a new rule (ARM 8.99.1701) pertaining to the Wood Products Revolving Loan Fund Program

Previous Notice(s) and Hearing Information

On May 23, 2025, the department published MAR Notice No. 2025-159.1 pertaining to the public hearing on the proposed adoption of the above-stated rule in the 2025 Montana Administrative Register, Issue Number 10. A hearing was held on June 12, 2025.

Final Rulemaking Action – Effective July 12, 2025

ADOPT AS PROPOSED

The agency has adopted the following rule as proposed:

NEW RULE 1 (8.99.1701) INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE MONTANA WOOD PRODUCTS REVOLVING LOAN FUND

Statement of Reasons

No comments were received.

Contact

Jada Maynor
(406) 841-2596
jada.maynor@mt.gov
Montana Relay: 711

Rule Reviewer

Amy Barnes

Approval

Mandy Rambo, Deputy Director

MONTANA
ADMINISTRATIVE
REGISTER

FISH AND WILDLIFE COMMISSION

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-111.2

Summary

Citizen-initiated rulemaking for the Bull River in Sanders County

Previous Notice(s) and Hearing Information

On March 28, 2025, the Fish and Wildlife Commission published MAR Notice No. 2025-111.1 pertaining to the public hearing on the proposed adoption of a new rule in Issue 6 of the 2025 Montana Administrative Register. The public hearing was held on April 28, 2025.

Final Rulemaking Action – Effective July 12, 2025

ADOPT WITH CHANGES

The agency has adopted the following rule with changes from the original proposal, stricken matter interlined, new matter underlined:

NEW RULE 1 (12.11.5206) BULL RIVER

(1) The Bull River is located in Sanders County.

(2) The Bull River and its tributaries are closed to any motorized watercraft <u>greater than 10 horsepower</u> from the headwaters of the Bull River to its confluence with the Clark Fork River.

Authorizing statute(s): 87-1-303, MCA

Implementing statute(s): 87-1-303, MCA

Statement of Reasons

No testimony was provided at the public hearing and the commission has considered the written comments received. A summary of the comments received and the commission's responses are as follows:

Comment 1: Montana Fish, Wildlife and Parks Region 1 enforcement staff provided written comments suggesting that a horsepower restriction would be sufficient to address the safety concerns raised in the citizen rulemaking petition and would better maintain existing recreational opportunities on the resource.

Response 1: The commission has adopted a horsepower restriction in lieu of the original proposed ban of all motorized watercraft.

Comment 2: Montana Fish, Wildlife and Parks Region 1 fisheries staff provided written comments noting that, while impacts specific to the fishery from the type of motorized watercraft identified in the citizen petition are difficult to assess, a horsepower restriction or ban on motorized watercraft would likely produce fewer impacts to the fishery and the river's bank structure than the absence of any restrictions.

Response 2: The commission has adopted a horsepower restriction in lieu of the original proposed ban of all motorized watercraft.

Contact

Kara Thompson
(406) 594-8071
kara.thompson@mt.gov

Rule Reviewer

Jeff Hindoien

Approval

Lesley Robinson, Chair

Fish and Wildlife Commission

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-522.2

Summary

Amendment of ARM 37.40.830 pertaining to Hospice Reimbursement

Previous Notice(s) and Hearing Information

On April 25, 2025, the Department of Public Health and Human Services published MAR Notice No. 2025-522.1 pertaining to the public hearing on the proposed amendment of the above-stated rule published in the 2025 Montana Administrative Register, Issue Number 8.

A hearing was held on May 19, 2025.

Final Rulemaking Action – The increase in hospice reimbursement rates will be applied retroactively to October 1, 2024. Any decreases in hospice rates will not be applied retroactively and will be effective the day after publication of this adoption notice.

AMEND AS PROPOSED

The agency has amended the following rule as proposed:

37.40.830 HOSPICE, REIMBURSEMENT

Statement of Reasons

No comments were received.

Contact

Bailey Yuhas
(406) 329-7913
hhsadminrules@mt.gov
Fax: (406) 444-9744

Rule Reviewer

Robert Lishman

Approval

Charles T. Brereton, Director

Department of Public Health and Human Services

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF FISH, WILDLIFE AND PARKS

NOTICE OF ADOPTION OF EMERGENCY RULE

MAR NOTICE NO. 2025-235.1

Summary

Adoption of an emergency rule closing the Harrison Lake Fishing Access Site

Reason

The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(1) The Harrison Lake Fishing Access Site is closed due to public safety concerns and law enforcement activity in the area.

(2) The site closure is necessary to protect public safety, and it will remain in place until the department determines that the site is safe for public recreation again.

(3) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, due to the combination of unsafe conditions and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. This emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 13 of the 2025 Montana Administrative Register.

Effective Date

Monday, June 23, 2025

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Monday, July 28, 2025 at 5:00 p.m.

Contact

Kara Thompson
406-594-8071
Kara.Thompson@mt.gov

ADOPT

The agency is adopting:

RULE 1 EMERGENCY CLOSURE OF THE HARRISON LAKE FISHING ACCESS SITE

(1) The Harrison Lake Fishing Access Site is located on Harrison Lake (Willow Creek Reservoir) in Madison County.

(2) The Harrison Lake Fishing Access Site is closed to public recreation.

(3) This rule will remain in effect until the department determines that the affected area is again safe for public occupancy and recreational use. Signs closing the Harrison Lake Fishing Access Site will be removed when the rule is no longer effective.

Authorizing statute(s):2-4-303, 87-1-202, MCA

Implementing statute(s):2-4-303, 87-1-202, MCA

Interested Persons

The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department, commission or board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Written requests may be mailed or delivered to the Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be completed online at https://public.govdelivery.com/accounts/MTFWP/subscriber/new.

Committee Notification

The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on Monday, June 23, 2025.

Rule Reviewer

Alexander R. Scolavino III

Approval

Christy Clark, Director